English LIBERTIES:

OR, THE

Free-Born SUBJECT's

INHERITANCE.

CONTAINING,

I. **Magna Charta**, the **Petition of Right**, The **Habeas Corpus** Act, *&c.* With Comments upon each of them. The Proceedings in Appeals of Murder; The Work and Power of **Parliaments**, the Qualifications necessary for such as should be Chosen to that great Trust. The Advantage *Englishmen* enjoy by Trials by **Juries**; That they are Judges of Law as well as Fact; and are not Fineable, nor to be Punish'd, for going contrary to the Judges Directions.

II. Of **Justices of the Peace**; their Oath, Office, and Power, in many Respects; With several **Law-Cases** Alphabetically Digested for Ease and Brevity, and Warrants proper thereto, placed exact after each particular Case; concluding with a short Discourse of the Succession of the *Crown*, sitting of Parliaments, and Trials of Treason. As also Directions for Drovers, Badgers, Butchers, Toll-keepers, and Clerks of the Market, *&c.*

III. The **Coroner** and **Constable's** Duty, Relating to Dead-Bodies, Murder, Man-Slaughter, and Felo-de-se; Arrests, Escapes, and Conservation of the Peace. And Lastly, The **Church-Warden**, **Overseer**, and **Scavenger's** Duty at Large, in the most necessary Particulars.

First Compiled by **Henry Care**, *and now Inlarged with new and Useful Additions, by a Wellwisher to his Country. Dedicated to the Honourable* **House of Commons.**

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THE
Epiſtle Dedicatory,
To the Honourable
Houſe of COMMONS.

IF it be the Misfortune of Great Perſonages, to fall as Sacrifices to the Uſurpers of their Laws and Religion, no Wonder that the Leſſer are Juſtled down and Trampled under Foot. Witneſs the late Reigns, when ſo many Noble Supporters of this Nation's Priviledges were Unlawfully Hurry'd and Diſpatch'd to a better World: The Illegal Tryals, Suborn'd Evidences, Corrupt Judges, and Infatuated Superiors, who, contrary to Law, Violated their Oaths, Broke our Laws, took away our Goods, and, by Cruel Butcheries, depriv'd too many Innocents of their Lives. Then was the time, when Britannia *lay Bleeding, and Religion turn'd out of Doors: When it was a Crime to have Chriſtianity Expos'd, and the Errors of*

Rome *ſpoke againſt: Then it was, Right Honourable, that I had Seiz'd from me Five Thouſand of this Book, beſides a conſiderable Number of others, Writ purely for the Promoting the Proteſtant Intereſt, and Preſerving intire (from Romiſh Uſurpations) the Rights and Liberties of this Nation: Beſides the Impoſing on me Illegal Fines, two Years Impriſonment, and Corporal Puniſhment, as appears by the Reſolutions of the* Houſe of Commons, Hill. 31 *and* 32 Car. 2. *the Iſſuing out Warrants to Apprehend and take away my Life, the which was preſerved by flying, and remaining an Exile eight Years beyond the Seas; from whence being ſome-time return'd, Their Excellencies, the Lords Juſtices, having conſidered my late Sufferings, (as appears by their Order of Council) though not (as yet) met with its deſigned Effect, I thought fit to Reprint this Collection, having left out thoſe Statutes relating to Diſſenters, &c. for whom His Moſt Gracious Majeſty, and both Houſes of Parliament, have made ſuch Proviſions, as do render us a Happy and United People: Not only by the late Acts againſt Prophaneneſs and Immorality, and for Baniſhing Popiſh Prieſts and Jeſuits the Realm, but by ſeveral others made for the Benefit and Eaſe of the Subject.*

Accept therefore, Great Senators, theſe Weak Endeavours, which in more larger Volumes are your own already; It is but an Abbreviation of

of the Laws, Rights and Privileges of this Nation, which every Man and Woman become Heirs to so soon as they are Born into the World; the which (as a Rich Dowry) was so settled upon each other at first, that all the Nations under the Copes of Heaven cannot Parallel the like; who may not only Wonder and Admire the Blessed Freedom of English-men, *but Condole their own Nativities, being Born under the Tyrannick Yokes of Arbitrary Princes.*

In fine, English-men *cannot be made too sensible of the Worth of their Rights and Liberties, which Supports this Envy'd Isle from all the Incursions of Hell and* Rome; *The Assaults, Assassinations, and Combinations, of King-killing Conspirators; and from the Force and Power of all Foreign Invasions, whose implacable Indeavours have been by Heaven all along Miraculously Defeated, their Plots and Counter-Plots Ruin'd, and their whole Scheme of Mischief blown away by the Breath of the Almighty: And we now live under an Auspicious Reign, Bless'd by a Sovereign Ruler, who hath restor'd us our Liberty and Property, Fought our Battles, become Victorious, and Oblig'd our Enemies to a Universal and Lasting Peace; Put a Stop, in a great Measure, to that Current of Vice, which often brings Judgments down from Heaven upon a Nation, by Good and Wholesome Laws,*

against Prophaneness and Immorality. And now, that the Almighty may Bless Great Britain, *the Defender of Her Faith, His present Most Gracious Majesty King* William, *and Both Houses of Parliament,*

Is the Desire and Prayer of

Your Honours Devoted Servant,

Sept. 24. 1700.

B. Harris.

A

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THE PROEM.

THE Conſtitution of our Engliſh Government (the beſt in the World) is no Arbitrary *Tyranny*, like the Turkiſh Grand Seignior's, or the French King's, whoſe Wills (or rather *Luſts*) diſpoſe of the Lives and Fortunes of their unhappy Subjects: Nor an *Oligarchy*, where the *great* ones (like Fiſh in the Ocean) prey upon, and live by devouring the *leſſer* at their pleaſure: Nor yet *a Democracy*, or Popular State; much leſs an *Anarchy*, where all confuſedly are *hail fellows, well met*. But a moſt excellently mixt, or *qualified Monarchy*, where the King is veſted with large *Prerogatives* ſufficient to ſupport *Majeſty*; and reſtrain'd only from Power of doing himſelf and his People *harm*, (which would be contrary to the very end of all Government, and is properly rather *weakneſs* than power) the *Nobility* adorn'd with Priviledges to be a *Screen* to Majeſty, and a refreſhing Shade to their Inferiors, and the *Commonality* too, ſo Guarded in their Perſons and Properties by the Senſe of Law, as renders them *Free men*, not Slaves.

In *France*, and other Nations, the meer Will of the Prince *is Law*, his Word takes off any Man's *Head*, impoſes *Taxes*, ſeizes any Man's *Eſtate*, when, how, and as often as he liſts; and if one be *accuſed*, or but ſo much as Suſpected of any Crime, he may either preſently Execute him, or Baniſh, or Impriſon him at pleaſure; or

if he will be so Gracious as to proceed by Form of their Laws, if any *two Villains* will but swear against the poor Party, his Life is gone. Nay, if there be *no Witnesses*, yet he may be put to the *Rack*, the Tortures whereof make many an Innocent Person confess himself Guilty, and then with seeming *Justice* he is Executed; or, if he prove *so stout*, as in Torments to deny the Fact, yet he comes off with *Disjoynted Bones*, and such Weakness as renders his Life a Burthen to him ever-after.

But in *England*, the Law is both the *Measure and the Bond* of every Subject's Duty and Allegiance, each Man having a fixed Fundamental Right born with him, as to *Freedom of his Person*, and *Property in his Estate*, which he cannot be deprived of, but either by his consent, or some Crime, for which the Law has Impos'd such a Penalty or Forfeiture. For all our Kings take a solemn Oath (1) At their Coronation, *to Observe and cause all the Laws to be kept*, which was done by our present most Gracious Soveraign: (2) Likewise all our Judges take an Oath, wherein, amongst other points, they swear, (3) *To do equal Law and Right to all the King's Subjects, Rich and Poor, and not to delay any Person of Common Right for the Letters of the King, or of any other Person, or for any other Cause: But if any such Letters come to them, they shall proceed to do the Law, the same Letters notwithstanding:* Therefore saith *Fortescue* (who was first *Chief Justice*, and afterwards Lord *Chancellor* to King *Henry* the 6th.) in his Book *de Laudibus Legum Angliæ*, cap. 9. *Non potest Rex Angliæ*, &c. *The King of* England *cannot alter nor change the Laws of his Realm at his pleasure, For why, he Governeth his People by Power not only Royal, but also Politick: If his Power over them were only Regal, then he might change the Laws of his Realm, and charge his Subject with Tallage, and other Burthens without their consent, and such is the Dominion that the Civil Laws purport when they cry,* Quod principi placuit Legis habet Vigorum, *The Princes pleasure has the force of a Law. But fr*

(1) *See Book of Oaths*, p. 1. & 3.
(2) *Baker's Chron.* fol. 741.
(3) *Book of Oaths*, p. 216.

this much differeth the power of a King, whose Government over his People is Politick; For he can neither change Laws without the consent of his Subjects, nor yet charge them with Impositions against their Wills; Wherefore his People do quietly and freely enjoy and occupy their own Goods, being Ruled by such Laws as they themselves desire. Thus Fortescue, with whom Accords Bracton, a Reverend Judge, and Law-Author, in the Reign of King Henry the third, saying — Rex in Regno suo superiores habet, Deum & legem; The King in his Realm hath two Superiours, God and the Law; for he is under the Directive, though not Coercive Power of the Law; and on the same Score Judge Vaughan, speaking of our Fundamental Laws, which are Coeval with the Government, sticks not to say, The Laws of England were never the Dictates of any Conqueror's Sword, or the Placita, or Good Will and Pleasure of any King of this Nation, or to speak impartially or Freely, the Results of any Parliament that ever sate in this Land. And the late cited Fortescue, in his 13 chap. has a very apt similitude to Illustrate and Demonstrate this, The Law (says he) taketh its Name, a Ligando, to bind; for thereby the Politick Body is knit and preserv'd together, as the Natural Body by the Banes, Sinews, and Members, which retain every one their proper Functions; And, as the Head of a Body Natural cannot change his Sinews, nor cannot deny or withhold from his inferiour Members their peculiar Powers, and several Nourishments of Blood and Spirits, no more can a King, which is the Head of a Body Politick, change the Laws of that Body, nor withdraw from his People their proper Substance, against their Wills and Consents in that behalf.

'Tis true, the Law it self affirms, The King can do no wrong, which proceeds not only from a Presumption, that so Excellent a Person will do none; But also because he Acts nothing but by Ministers, which (from the lowest to the highest) are answerable for their Doings; so that if a King in his Passion should command A. to kill B. without process of Law, A. may yet be prosecuted by Indictment, or upon an Appeal, (where no Royal Pardon is allowable) and must for the same be Executed, such Command notwithstanding.

This Original happy frame of Government, is truly and properly call'd an *English Man's Liberty*, a Priviledge, not to exempt from the Law, but to be freed in Person and Estate, from Arbitrary Violence and Oppression; A *greater Inheritance* (saith Judge *Cook*) *is derived to every one of us from our Laws, than from our Parents*; For, without the former, what would the latter signifie? And this Birth-right of *English-men*, shines most conspicuously in Two Things: 1. *Parliaments.* 2. *Juries.*

By the First the Subject has a share by his chosen Representatives in the *Legislative* (or Law-making) Power; for, no new Laws bind the People of *England*, but such as are by common consent agreed on in that great Council.

By the Second, He has a share in the *Executive* part of the Law; no Causes being Tryed, nor any Man Adjudged to lose Life, Member, or Estate, but upon the Verdict of his Peers, (or Equals) his Neighbours, and of his own Condition. These Two Grand *Pillars of English Liberty*, are the Fundamental Vital Priviledges, whereby we have been, and are preserv'd more free and happy than any other People in the World, and (we trust) shall ever continue so; For, whoever shall design to Impair, Pervert, or Undermine either of these, do strike at the very Constitution of our Government, and ought to be Prosecuted and Punished with the utmost Zeal and Rigour. To cut down the *Banks*, and let in the Sea, or to Poyson all the *Springs and Rivers* in the Kingdom, could not be a greater Mischief; for this would only affect the present Age, but the other will Ruine and Enslave all our Posterity.

But besides these General *Paramount Priviledges*, which the English are Elated in by the Original Constitution of their Government, there are others more particularly declared and expressed in divers *Acts of Parliament*; of which, several of the most remarkable and useful are here presented at large to the Reader, with some *Notes* thereupon, for his better understanding of the same.

MAGNA

MAGNA CHARTA, or the Great Charter made in the Ninth Year of King *Henry* the Third, and Confirmed by King *Edward* the First, in the Eight and Twentieth Year of his Reign.

EDward, *By the Grace of God, King of* England, *Lord of* Ireland, *and Duke of* Guyan; *To all Arch-bishops, Bishops, &c. We have seen the great Charter of the Lord* Henry, *sometimes King of* England, *our Father, of the Liberties of* England, *in these Words.*

HEnry, *By the Grace of God, King of* England, *Lord of* Ireland, *Duke of* Normandy *and* Guyan, *and Earl of* Anjou; *To all Arch-Bishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Provosts, Officers, and to all Bayliffs, and other our Faithful Subjects, which shall see this present Charter, Greeting. Know you, that We unto the Honour of Almighty God, and for the Salvation of the Souls of our Progenitors and Successors, Kings of* England, *to the Advancement of Holy Church, and Amendment of our Realm, of our meer and free Will, have Given and Granted to all Arch-Bishop, Bishops, Abbots, Priors, Earls, Barons, and to all Free-men of this our Realm, these Liberties following, to be kept in our Kingdom of* England *for ever.*

CHAP. I.

A Confirmation of Liberties.

FIrst, We have granted to God, and by this our present Charter, have confirm'd for us and our Heirs for ever, That the Church of *England* shall be free, and shall have all her whole Rights and Liberties Inviolable. (a) We have granted also, and given to all the Free-men of our Realm, for us and our Heirs for ever, these Liberties under-written, to have, and to hold to them and their Heirs for ever.

CHAP. II.

The Relief of the King's Tenant of full Age.

IF any of our Earls or Barons, or any other which Hold of Us in Chief by Knights Service, Die, and at the time of his Death, his Heir be of full Age, and oweth to Us Relief, he shall have his Inheritance by the old Relief, that is to say, the Heir or Heirs of an Earl, for a whole Earldom, by one hundred Pound: the Heir or Heirs of a Baron for a whole Barony, by one hundred Marks: the Heir or Heirs of a Knight, for one whole Knight's Fee, one hundred Shillings at the most. And he that hath less, shall give less, according to the old Custom of the Fees.

CHAP. III.

The Wardship of an Heir within Age; The Heir a Knight.

BUT if the Heir of any such be within Age, his Lord shall not have the Ward of him, nor of his Land, before that he hath taken of him Homage. (2) And after that such an Heir hath been in Ward (when he is come to full Age) that is to say, to the Age of one and twenty Years, he shall have his Inheritance without Relief, and without fine; so that if such an Heir, being within Age, be made a Knight, yet nevertheless his Land shall remain in the keeping of his Lord unto the Term aforesaid.

CHAP. IV.

No waste shall be made by a Guardian in Wards Lands.

THE Keeper of the Land of such an Heir being within Age, shall not take of the Lands of the Heir but reasonable Issues, reasonable Customs, and reasonable Services, and that without Destruction, and waste of his Men and his Goods. And if we commit the Custody of any such Land to the Sheriff, or to any other, which is answerable unto us, for the Issues of the same Land, and he make destruction or waste of those things which he hath in Custody, we will take of him Amends and Recompence therefore. (3) And the Land shall be committed to two lawful and discreet Men of that Fee, which

which ſhall anſwer unto Us for the Iſſues of the ſame Land, or unto him whom we will Aſſign. (4.) And if we give or ſell to any Man the Cuſtody of any ſuch Land, and he therein do make deſtruction or waſte, he ſhall loſe the ſame Cuſtody. And it ſhall be Aſſigned to two lawful and diſcreet Men of that Fee, which alſo in like manner ſhall be anſwerable to Us, as afore is ſaid.

CHAP. V.

Guardians ſhall maintain the Inheritance of their Wards: And of Biſhopricks.

THE Keeper, ſo long as he hath the Cuſtody of the Land of ſuch an Heir, ſhall keep up the Houſes, Parks, Warrens, Ponds, Mills, and other things pertaining to the ſame Land, with the Iſſues of the ſaid Land: And he ſhall deliver to the Heir, when he cometh to his full Age, all his Land, ſtored with Ploughs and all other things, at the leaſt, as he receiv'd it. All theſe things ſhall be obſerved in the Cuſtody of Arch-Biſhopricks, Biſhopricks, Abbies, Priories, Churches and Dignities vacant, which appertain to Us: Except this, that ſuch Cuſtody ſhall not be ſold.

CHAP. VI.

Heirs ſhall be Married without Diſparagement.

HEIRS ſhall be Married without Diſparagement.

CHAP. VII.

A Widow ſhall have her Marriage, Inheritance, and Quarentine. The King's Widow.

A Widow, after the Death of her Husband, Incontinent, and without any difficulty, ſhall have her Marriage, and her Inheritance. (2.) And ſhall give nothing for her Dower, her Marriage, or her Inheritance, which her Husband and She held the day of the Death of her Husband. (3.) And She ſhall tarry in the chief Houſe of her Husband, by forty days after the Death of her Husband, within which days her Dower ſhall be Aſſigned her, (if it were not Aſſigned her before) or that the Houſe be a Caſtle. (4.) And if ſhe depart from the

Castle, then a competent House shall be forthwith provided for her, in the which she may honestly dwell, until her Dower be to her Assigned, as it is aforesaid; And she shall have in the mean time her reasonable Estovers of the Common. (5.) And for her Dower shall be Assigned unto her the third part of all the Lands of her Husband, which were his during Coverture, except She were endowed of less at the Church door. (6.) No Widow shall be distrained to Marry her self: Nevertheless She shall find Surety, that She shall not Marry without our License and Assent (if She hold of Us) nor without the Assent of the Lord, if she hold of another.

CHAP. VIII.

How Sureties shall be charged to the King.

WE, or our Bailiffs, shall not seize any Land or Rents for any Debt, as long as the present Goods and Chattels of the Debtor do suffice to pay the Debt, and the Debtor himself be ready to satisfie therefore. (2.) Neither shall the Pledges of the Debtor be distrained, as long as the principal Debtor is sufficient for the payment of the Debt. (3.) And if the principal Debtor, fail in the payment of the Debt, having nothing wherewith to pay, or will not pay where he is able, the Pledges shall answer for the Debt. (4.) And if they will, they shall have the Lands and Rents of the Debtor until they be satisfied of that which they before payed for him, except that the Debtor can shew himself to be acquitted against the said Sureties.

CHAP. IX.

The Liberties of London, *and other Cities and Towns confirmed.*

THE City of *London* shall have all the old Liberties and Customs which it hath been used to have. Moreover, we Will and Grant, that all other Cities and Borroughs, Towns, and the Barons of the five Ports, and all other Ports, shall have all their Liberties and free Customs.

CHAP.

CHAP. X.

None shall distrain for more Service than is due.

NO Man shall be distrained to do more Service for a Knight's Fee, nor for any Freeholder, than therefore is due.

CHAP. XI.

Common-Pleas shall not follow the King's Court.

COmmon-Pleas shall not follow our Court, but shall be holden in some Place certain.

CHAP. XII.

Where, and before whom Assizes shall be taken. Adjournment for Difficulty.

ASsizes of *Novel Disseisin* and of *Mortdancester*, shall not be taken but in the Shires, and after this manner; If we be out of this Realm, our Chief Justicers shall send out Justicers through every Country once in the year; Which, with the Knights of the Shire, shall take the said Assizes in those Counties. (2.) And those things that at the coming of our aforesaid Justicers, being sent to take those Assizes in the Counties, cannot be determined, shall be ended by them in some other place in their Circuit. (3.) And those things which for difficulty of some Articles cannot be determined by them, shall be referred to our Justicers of the Bench, and there shall be ended.

CHAP. XIII.

Assizes of Darrein Presentment.

ASsizes of Darrein Presentment, shall be always taken before our Justicers of the Bench, and there shall be determined.

CHAP. XIV.

How Men of all sorts shall be Amerced, and by whom.

A Free man shall not be amerced for a small fault, but after the manner of the fault. And for a great fault, after the greatness thereof, saving to him his contenement. (2.) And a Merchant likewise, saving to him his Merchandize. (3.) And any others Villain than ours shall be likewise amerced, saving his Wainage, if he fall into our Mercy. (4.) And none of the said A-

merciaments shall be Assessed, but by the Oath of honest and lawful Men of the Vicinage. (5.) Earls and Barons, shall not be amerced, but by their Peers, and after the manner of their offence. (6.) No Man of the Church shall be amerced after the quantity of his Spiritual Benefice, but after his Lay-tenement, and after the quantity of his Offence.

CHAP. XV.

Making of Bridges and Banks.

NO Town nor Freeman shall be distrained to make Bridges nor Banks, but such as of old time, and of right have been accustomed to make them in the time of King *Henry* our Grandfather.

CHAP. XVI.

Defending of Banks.

NO Banks shall be defended from henceforth, but such as were in defence in the time of King *Henry* our Grandfather, by the same places, and the same bounds as they were wont to be in his time.

CHAP. XVII.

Holding Pleas of the Crown.

NO Sheriff, Constable, Escheator, Coroner, nor any other our Bailiffs shall hold Pleas of our Crown.

CHAP. XVIII.

The King's Debtor dying, the King shall be first paid.

IF any that holdeth of Us Lay-fee do die, and our Sheriff or Bayliff do shew our Letters Patents of our Summons for Debt, which the Dead Man did owe to us: It shall be lawful to our Sheriff or Bayliff, to Attack and Inroll all the Goods and Chattels of the Dead, being found in the said Fee, to the value of the same Debt, by the sight and testimony of lawful Men; So that nothing thereof be taken away, until we be clearly paid off the Debt. (2.) And the residue shall remain to the Executors, to perform the Testament of the Dead. (3.) And if nothing be owing to Us, all the Chattels shall go to the use of the Dead (saving to his Wife and Children the reasonable parts.)

CHAP.

CHAP. XIX.

Purveyance for a Castle.

NO Constable, nor his Bayliff shall take Corn or other Chattels of any Man, if the Man be not of the Town where the Castle is, but he shall forthwith pay for the same, unless that the Will of the Seller was to respite the payment. (2.) And if he be of the same Town, the Price shall be paid unto him within forty days.

CHAP. XX.

Doing of Castle Ward.

NO Constable shall distrain any Knight for to give Money for keeping of his Castle, if he himself will do it in his proper Person, or cause it to be done by another sufficient Man, if he may not do it himself for a reasonable cause. (2.) And if we do lead or send him in an Army, he shall be free from Castle-ward for the time that he shall be with Us in Fee in our Host, for the which he hath done Service in our Wars.

CHAP. XXI.

Taking of Horses, Carts, and Woods.

NO Sheriff nor Bayliff of ours, nor any other, shall take the Horses or Carts of any Man to make Carriage, except he pay the old price limited, that is to say, for Carriage with two Horse, 10d. a day, for three Horse 14d. a day. (2.) No demesne Cart of any spiritual Person or Knight, or any Lord, shall be taken by our Bayliffs. (3.) Nor we, nor our Bayliffs, nor any other shall take any Man's Wood for our Castle, or other our Necessaries to be done, but by the License of him whose the Wood is.

CHAP. XXII.

How long Felons Lands shall be holden to the King.

WE will not hold the Lands of them that be convict of Felony but one Year and one day, and then those Lands shall be delivered to the Lords of the Fee.

CHAP

CHAP. XXIII.

In what place Wares shall be put down.

ALL Wares from henceforth shall be utterly put down by *Thames* and *Medway*, and through all *England*, but only by the Sea-coasts.

CHAP. XXIV.

In what case a Præcipe in Capite, is not grantable.

THE Writ that is called *Præcipe in Capite*, shall be from henceforth granted to no Person of any Free-hold, whereby any Free-man may lose his Court.

CHAP. XXV.

There shall be but one Measure throughout the Realm.

ONE Measure of Wine shall be through our Realm, and one Measure of Ale, and Measure of Corn, that is to say, the Quarter of *London*. (2.) And one breadth of died Cloath, Russets, and Haberjects, that is to say, two Yards within the Lists. (3.) And it shall be of Weights as it is of Measures.

CHAP. XXVI.

Inquisition of Life and Member.

NOthing from henceforth shall be given for a Writ of Inquisition, nor taken of him that prayeth Inquisition of Life or of Member, but it shall be granted freely, and not denied.

CHAP. XXVII.

Tenure of the King, in Socage, and of another by Knights Service. Petit Serjeantry.

IF any do hold of Us by Free-farm, or by Socage, or Burgage, and he holdeth Lands of another by Knights Service, we will not have the custody of his Heir, nor of his Land, which is holden of the Fee of another, by reason of that Fee-farm, Socage, or Burgage. (2.) Neither will we have the custody of such Fee-farm, or Socage, or Burgage, except Knights Service be due unto Us out of the same Fee-farm. (3.) We will not have the custody of the Heir, or of any Land, by occasion of any Petit Serjeantry that any Man holdeth of us by Service, to pay a Knife, an Arrow, or the like.

CHAP.

CHAP. XXVIII.

Wager of Law shall not be without Witness.

NO Bayliff, from henceforth, shall put any Man to his open Law, nor to an Oath, upon his own bare saying, without faithful Witnesses brought in for the same.

CHAP. XXIX.

None shall be Condemned without Trial. Justice shall not be sold or deferred.

NO Freeman shall be taken or Imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be Outlawed, or Exiled, or any otherwise destroyed, nor we will not pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. (z) We will sell to no Man, we will not deny or defer to any Man, either Justice or Right.

CHAP. XXX.

Merchants Strangers, coming into this Realm shall be well used.

ALL Merchants (if they were not openly prohibited before) shall have their safe and sure Conduct to depart out of *England*, to come into *England*, to tarry in and go through *England*, as well by Land as by Sea, to buy and sell without any manner of evil Tools, by the old and rightful Customs, except in time of War. (a) And if they be of a Land making War against Us, and be found in our Realm at the beginning of the Wars, they shall be Attached without harm of Body and Goods, until it be known unto us, or our Chief Justice, how our Merchants be intreated there in the Land making War against Us. (3) And if our Merchants be well intreated there, theirs shall be likewise with Us.

CHAP. XXXI.

Tenure of a Barony coming into the King's Hand by Escheat.

IF any Man hold of any Eschete, as of the Honour of *Wallingford*, *Nottingham*, *Boloin*, or of any other Eschetes which be in our hand, and are Baronies, and dye, his Heirs shall give none other Relief, nor do none other

other Service to Us, than he ſhould to the Baron, if it were in the Baron's hand. (1) And we in the ſame-wiſe ſhould hold it as the Baron held it, neither ſhall we have, by occaſion of any Baron or Eſchete, any Eſchete, or Keeping of any of our Men, unleſs he that held the Barony or Eſchete, otherwiſe held of us in Chief.

CHAP. XXXII.

Lands ſhall not be alienated to the Prejudice of the Lord's Service.

NO Free-man, from henceforth, ſhall give or ſell any more of his Land, but ſo, that of the Reſidue of the Lands, the Lord of the Fee may have the Services due to him, which belongeth to the Fee.

CHAP. XXXIII.

Patrons of Abbies ſhall have the Cuſtody of them in the time of Vacation.

ALL Patrons of Abbies, which have the King's Charter of *England*, of Advowſon, or have old Tenure or Poſſeſſion in the ſame, ſhall have the Cuſtody of them when they fall void, as it hath been accuſtomed, and as it is afore declared.

CHAP. XXXIV.

In what only Caſe a Woman ſhall have an Appeal of Death.

NO Man ſhall be taken or Impriſoned upon the Appeal of a Woman, for the Death of any other than of her Husband.

CHAP. XXXV.

At what time ſhall be kept a Country Court, Sheriff's turn, and a Leet.

NO Country, from henceforth, ſhall be holden, but from Month to Month; and where greater time hath been uſed, there ſhall be greater. (2) Nor any Sheriff, or his Bayliff, ſhall keep his Turn in the Hundred, but twice in the Year; and no where but in due place, and accuſtomed, that is to ſay, once after *Eaſter*, and again after the Feaſt of St. *Michael*. (3) And the view of *Frank-pledge* ſhall be likewiſe at the Feaſt of.

of St. *Michael* without occasion. So that every Man have his Liberties which he had, or used to have in the time of King *Henry* our Grandfather, or which he hath purchased since. (4) The view of *Frank-pledge* shall be so done, that our Peace may be kept. (5) And that the Tything be wholly kept as it hath been accustomed. (6) And that the Sheriff seek no occasions, and that he be content with so much as the Sheriff was wont to have, for his view-making, in the time of King *Henry* our Grandfather.

CHAP. XXXVI.

No Land shall be given in Mortmain.

IT shall not be lawful, from henceforth, to any one, to give his Lands to any Religious House, and to take the same Land again, to hold of the same House. Nor shall it be lawful to any House of Religion, to take the Lands of any, and to Lease the same to him of whom he received it: If any, from henceforth, give his Lands to any Religious House, and thereupon be Convict, the Gift shall be utterly void, and the Land shall Accrue to the Lord of the Fee.

CHAP. XXXVII.

A Subsidy in respect of this Charter, and the Charter of the Forrest, granted to the King.

EScuage, from henceforth, shall be taken, like as it was wont to be in the time of King *Henry* our Grandfather, reserving to all *Archbishops, Bishops, Abbots, Priors, Templars, Hospitallers, Earls, Barons,* and all Persons, as well Spiritual as Temporal, all their free Liberties, and free Customs, which they have had in time past. (2) And all these Customs and Liberties aforesaid, which we have granted to be holden within this our Realm, as much as appertaineth to us and our Heirs. (3) And all Men of this our Realm, as well Spiritual as Temporal (as much as in them is) shall observe the same against all Persons in likewise. (4) And for this our Gift and Grant of these Liberties, and of other contained in our Charter of Liberties of our Forest, the *Archbishops, Bishops, Abbots, Priors, Earls, Barons,*

Barons, Knights, Free-holders, and other our Subjects, have given unto us the fifteenth part of all their Moveables. (5) And we have granted unto them on the other part, that neither we nor our Heirs shall procure or do any thing, whereby the Liberties in this Charter contained, shall be Infringed or Broken. (6) And if any thing be procured, by any Person, contrary to the Premisses, it shall be had of no force nor effect. These being Witnesses, Lord *S.* Archbishop of *Canterbury*, *E.* Bishop of *London*, &c.

We, Ratifying and approving these Gifts and Grants aforesaid, confirm and make strong all the same for Us and our Heirs perpetually; And by the Tenour of these Presents, do renew the same, Willing and Granting for Us and our Heirs, that this Charter, and all and singular his Articles for ever, shall be stedfastly, firmly and inviolably observed. And if any Article in the same Charter contained, yet hitherto peradventure hath not been kept, We will, and by Authority Royal, Command, from henceforth firmly they be observed. In Witness whereof we have caused these our Letters Patents to be made. *T. Edward* our Son at *Westminster*, the twenty eighth day of *March*, in the twenty eighth Year of our Reign.

Notes on *Magna Charta*.

THis excellent Law holds the first place in our Statute Books, for though there were, no doubt, many Acts of Parliament long before this, yet they are not now Extant: 'tis called *Magna Charta*, or the Great Charter, not in respect of its Bulk, but in regard of the great Importance and weight of the Matters therein contained; it is also stiled *Charta Libertatum Regni*, the Charter of the Liberties of the Kingdom, and upon great reason (saith *Cook* in his Proem) is it so called from

from the effect, *Quia liberos facit*, because it makes and preserves the People free.

Though it run in the style of the King *as a Charter*, yet (as my Lord *Cook* well observes on the 38 Chapter) it appears to have passed in Parliament; for there was then a Fifteenth granted to the King, by the Bishops, Earls, Barons, Free-tenants and People, which could not be but in Parliament, nor was it unusual in those times, to have Acts of Parliament in a Form of a Charter; as you may read in the Prince's Case, *Co. Rep. L. 8.*

Likewise, though it be said here, that the *King hath given and granted these Liberties*, yet they must not be understood as meer *Emanations* of Royal Favour, or new Bounties granted, which the People could not justly challenge, or had not a Right unto before; For the Lord *Cook*, at divers places, asserts, and all Lawyers know, that this Charter is, for the most part, only *Declaratory* of the principal Grounds of the Fundamental Laws and Liberties of *England*; no new Freedom is hereby granted, but a Restitution of such as lawfully they had before, and to free them of what had been usurped and incroached upon them by any Power whatsoever; and therefore you may see this Charter often mentions *Sua jura*, their Rights, and *Libertates suas*, their Liberties, which shews they had them before, and that the same now were confirmed.

As to the occasion of this Charter, it must be noted, that our Ancestors, the *Saxons*, had with a most equal Poize and Temperament very wisely contriv'd their Government, and made excellent Provisions for their Liberties, and to preserve the People from Oppression, and when *William* the *Norman* made himself Master of the Land, though he be commonly called the *Conqueror*, yet in truth he was not so, and I have known several Judges that would reprehend any Gentleman at the Bar, that casually gave him that Title: For though he killed *Harold* the Usurper, and routed his Army, yet he pretended a Right to the Kingdom, and was admitted by Compact, and did take an Oath to observe the *Laws and Customs*.

But

But the truth is, he did *not perform* that Oath so as he ought to have done; and his Successors, *William Rufus*, King *Stephen*, *Henry* the First, and *Richard* likewise, made frequent *Incroachments* upon the Liberties of their People, but especially King *John* made use of so many Illegal Devices to drain them of *Money*, that, wearied with intollerable Oppressions, they resolved to oblige the King to grant them their Liberties, and to promise the same should be observed, which King *John* did in *Runningmead* between *Staines* and *Windsor*, by two *Charters*, one called *Charta Libertatum*, *The Charter of Liberties* (the Form of which you may read in *Math. Paris*, *Fol.* 246. and is in effect, the same with this here recited) the other the *Charter of the Forest*, Copies of which he sent into every County, and commanded the Sheriffs, *&c.* to see them fulfilled.

But by Ill Council he quickly after began to violate them as much as ever, whereupon Disturbances and great Miseries arose, both to himself and the Realm.

The Son and Successor of this King *John*, was *Henry* the Third, who in the 19th Year of his Reign, renewed and confirmed the said Charters, but within two Years after *Cancelled* them, by the pernicious Advice of his Favourites, and particularly *Hubert de Burgh*, whom he had made Lord Chief Justice; one that in former times had been a great Lover of his Country, and a well-deserving Patriot, as well as learned in the Laws, but now, to make *this* a step to his *Ambition* (which ever rideth without Reins) perswaded and humoured the King, that he might avoid the Charters of his Father King *John* by *Duresse*, and his own great Charter, and *Charta de Foresta* also, for that he was *within Age* when he granted the same; whereupon the King, in the eleventh Year of his Reign, being then of full Age, got one of the great Charters, and of the Forrest, into his Hands; and by the Council principally of this *Hubert* his Chief Justice, at a Council holden at *Oxford*, unjustly *Cancelled both the said Charters*, (notwithstanding the said *Hubert de Burgh* was the primer Witness of all the Temporal

poral Lords to both the said *Charters*) whereupon he became in high Favour with the King, insomuch that he was soon after (*viz.* the 10th of *December*, in the thirteenth Year of that King) created (to the highest Dignity that in those times a Subject had) to be an Earl, *viz.* of *Kent*. But soon after (for Flatterers and Humorists have no sure Foundation) he fell into the King's heavy Indignation, and after many fearful and miserable *Troubles*, he was justly, and according to Law, Sentenced by his Peers in an open Parliament, and justly *Degraded* of that Dignity which he unjustly had obtained by his Counsel, for Cancelling of, *Magna Charta*, and *Charta de Foresta*.

In the ninth Chapter of this great *Charter*, all the Ancient *Liberties* and *Customs* of *London*, are confirmed and preserved, which is likewise done by divers other Statutes, as 14 *Edw.* 3. *Chap.* 2, &c.

The 29th Chapter, NO FREE-MAN SHALL BE TAKEN, *&c.* deserves to be written in Letters of Gold, and I have often wondred the words thereof are not Inscribed in Capitals on all our [illegible] *of Judicature*, *Town-Halls*, and most publick Edifices; they are the *Elixir* of our English Freedoms, the Store-house of all our Liberties. And because my Lord *Coke*, in the second part of his Institutes, has many excellent Observations, I shall here recite his very words. This Chapter containeth nine several Branches.

1. *That no Man be taken or Imprisoned*, but *per Legem terræ*, that is, by the *Common-Law*, *Statute-Law*, or *Custom* of *England*: For these words, *per Legem terræ*, being towards the end of this Chapter, do refer to all the precedent Matters in this Chapter; and this hath the first place, because the *Liberty of a Man's Person* is more precious to him, than all the rest that follow, and therefore it is great Reason that he should, by Law, be relieved therein, if he be wronged, as hereafter shall be shewed.

2. *No Man shall be disseised*, that is, put out of Seisin, or dispossessed of his Free-hold, that is, Lands or Liveli-

hood,

hood, or of his Liberties or Free Customs, that is, of such Franchises and Freedoms, and Free Customs, as belong to him by his Free birth-right, unless it be by the *lawful Judgment*, that is, *Verdict* of his Equals, (that is of Men of his own Condition) or by the *Law of the Land*, that is, (to speak it once for all) by the due course and Process of Law.

3. *No Man shall be outlawed*, made an *Exlex*, put out of the Law, that is, deprived of the Benefit of the Law, unless he be outlawed according to the Law of the Land.

4. *No Man shall be Exiled* or Banished out of his Country, that is, *Nemo perdet patriam*, no Man shall *lose his Country*, unless he be Exiled according to the Law of the Land.

5. *No Man shall in any sort be destroyed* (*Destruere id est quod prius structum & factum fuit penitus Everrere & Diruere*,) unless it be by the Verdict of his Equals, or according to the Law of the Land.

6. No Man shall be condemned at the King's Suit either before the King in his Bench, where the Pleas are *Coram Rege* (and so are the words, *Nec super eum ibimus*, to be understood,) nor before any other Commissioner or Judge whatsoever, and so are the words *Nec super eum mittemus*, to be understood, but by the Judgment of his Peers, that is, Equals, or according to the Law of the Land.

7. We shall sell to no Man Justice or Right.

8. We shall deny to no Man Justice or Right.

9. We shall defer to no Man Justice or Right.

Each of these we shall briefly explain.

1. No Man *shall be taken* (that is) Restrained of Liberty, by Petition or Suggestion to the *King* or his *Council*, unless it be by Indictment, or Presentment of good and lawful Men, where such Deeds be done. This Branch, and divers other parts of this *Act*, have been notably explained and construed by divers Acts of Parliament, several of which you will find recited hereafter in this Book.

2. No

2. *No Man shall be Disseised*, &c. Hereby is intended, that Lands, Tenements, Goods and Chattels shall not be seized into the King's Hands, contrary to this great Charter, and the Law of the Land; nor any Man shall be disseised of his Lands or Tenements, or dispossessed of his Goods or Chattels, contrary to the Law of the Land.

A Custom was alledged in the Town of C. that if the Tenant cease by two Years, that the Lord should enter into the Freehold of the Tenement, and hold the same until he were satisfied of the Arrearages: It was adjudged a Custom against the Law of the Land, to enter into a Man's Freehold in that case, without Action or Answer.

King *Henry* VI. granted to the Corporation of *Dyers* within *London*, power to search, &c. And if they found any Cloth died with *Log-wood*, that the Cloth should be Forfeit: And it was adjudged, that this Charter concerning the Forfeiture, was against the Law of the Land, and this Statute; For no Forfeiture can grow by Letters Patents.

No Man ought to be put from his Livelihood without Answer.

3. *No Man Outlawed.*] That is, barred to have the Benefit of the Law. And note, to this word *Outlawed*, these words, *Unless by the Laws of the Land*, do refer. [*Of his Liberties.*] This word hath three Significations:

1. As it hath been said, it signifieth the Laws of the Realm, in which respect this Charter is called *Charta Libertatum*, as afore said.

2. It signifieth the *Freedom the Subjects of England* have: For Example, The *Company* of *Merchant-Taylors* of *England*, having power, by their *Charter*, to make Ordinances, made an Ordinance, that every Brother of the same Society, should put the one half of his *Cloaths* to be dressed by some *Cloath-Workers* Free of the same *Company*, upon pain to Forfeit 10 *s.* &c. And it was adjudged, that this Ordinance was against Law, because it was against the Liberty of the Subject, for every

Subject

Subject hath freedom to put his *Cloaths* to be dressed by whom he will, *& sic de similibus.* And so it is, if such or the like Grant had been made by his Letters Patents.

3. *Liberties* signifie the *Franchises* and *Privileges* which the Subjects have of the Gift of the King, as the *Goods* and *Chattels* of *Felons*, *Out-laws* and the like; or which the Subject claims by Prescription, as *Wreck*, *Waifs*, *Stray* and the like.

So likewise, and for the same reason, if a Grant be made to any Man, to have the Sole making of *Cards*, or the Sole dealing with any other Trade, that Grant is against the Liberty and Freedom of the Subject, that before did or lawfully might have used that Trade, and consequently against this great *Charter*.

Generally *all Monopolies* are against this great *Charter*, because they are against the Liberty and Freedom of the Subject, and against the Law of the Land.

4. *No Man Exiled*, that is, Banish'd, or forced to depart or stay out of *England* without his consent. By the Law of the Land, no Man can be *Exiled* or Banished out of his Native Country, but either by Authority of Parliament, or in case of Abjuration for Felony by the Common-Law; and so when our Books, or any Record, speak of *Exile*, or Banishment, other than in case of Abjuration, it is to be intended to be done by Authority of Parliament, as *Belknap* and other Judges, &c. Banished into *Ireland*, in the Reign of *Richard* the Second.

This is a Beneficial Law, and is construed benignly; And therefore the King cannot send any Subject of *England* against his will, to serve him out of this Realm, for that should be an Exile, and he should *perdere Patriam*. No, he cannot be sent against his will into *Ireland*, to serve the King or his Deputy there, because it is out of the Realm of *England*: For if the King might send him out of his Realm to any place, then, under pretence of Service, as Ambassador or the like, he might send him into the farthest part of the World, which being an Exile, is prohibited by this Act.

5. No

5. *No Man destroyed*, that is, fore-judged of Life or Limb, or put to Torture, or Death, every Oppression against Law, by colour of any usurped Authority, is a kind of Destruction. And the words *Aliquo modo* (any otherwise) are added to this Verb *destroyed*, and to no other Verb in this Chapter, and therefore all things, by any manner of means, tending to Destruction, are prohibited; as if a Man be accused or Indicted of Treason, or Felony, his Lands or Goods cannot be granted to any, no not so much as by Promise, nor any of his Lands or Goods seized into the King's hands before he is Attainted; For, when a Subject obtaineth a Promise of the Forfeiture, many times undue means, and more violent Prosecution is used for private Lucre, tending to Destruction, than the quiet and just Proceeding of the Law would permit, and the Party ought to live of his own until Attainder.

6. *By lawful Judgment of his Peers,*] That is, by his *Equals*, Men of his own Rank and Condition. The general Division of Persons, by the Law of *England*, is, either *one that is Noble*, and in respect of his Nobility of the Lords House of Parliament, or *one of the Commons*, and in respect thereof, of the House of Commons in Parliament. And as there be divers degrees of Nobility, as Dukes, Marquesses, Earls, Viscounts and Barons, and yet all of them are comprehended under this word *Peers*, and are Peers of the Realm: So of the Commons, there be Knights, Esquires, Gentlemen, Citizens, and Yeomen, and yet all of them of the Commons of the Realm. And as every of the Nobles is one a Peer to another, though he be of a several Degree, so it is of the Commons; and as it hath been said of Men, so doth it hold of Noble Women, either by Birth or Marriage.

And forasmuch, as this Judgment by Peers is called *Lawful*, it shews the Antiquity of this manner of Trial: it was the ancient, accustomed, Legal Course, long before this Charter.

Or

Or by the Law of the Land.] That is, by due Process of Law, for so the words are expresly expounded by the Statute of 37 *Edw.* 3. *Chap.* 8. And these words are specially to be referred to those foregoing, to whom they relate. As none shall be condemned without a lawful Trial by his Peers, so none shall be taken, Imprisoned, or put out of his Free-hold, without due Process of the Law, that is, by the Indictment or Presentment of good and lawful Men of the Place, in due manner, or by Writ Original of the Common-Law.

Now, seeing that no Man can be taken, Arrested, Attached, or Imprisoned, but by due Process of Law, and according to the Law of the Land, these conclusions hereupon do follow.

1. That the Person or Persons which commit any, must have lawful Authority.

2. It is necessary that the Warrant, or *Mittimus*, be lawful, and that must be in Writing under his Hand and Seal.

3. The Cause must be contained in the Warrant, as for Treason, Felony, &c. Suspition of Treason, or Felony, or the like particular Crime; For if it do not thus specifie the Cause, if the Prisoner bring his *Habeas Corpus*, he must be discharged, because no Crime appears on the Return; Nor is it in such case, any Offence at all, if the Prisoner make his escape; whereas if the *Mittimus* contain the *Cause*, the escape would respectively be Treason or Felony, though in Truth he were not guilty of the first Offence. And this mentioning the *Cause*, is agreeable to Scripture, *Acts* 5.

4. The Warrant, or *Mittimus*, containing a lawful *Cause*, ought to have a lawful *Conclusion*, &c. And him safely to keep until he be delivered by Law, &c. and not until the Party committing shall farther order.

If any Man, by colour of any Authority, where he hath not any in that particular case, shall presume to Arrest or Imprison any Man, or cause him to be Arrested or Imprisoned, this is against this Act, and it is most hateful, when it is done by countenance of Justice.

King

King *Edward* VI. did incorporate the Town of St. *Albans*, and granted to them to make Ordinances, &c. they made a By-Law upon pain of Imprisonment, and it was adjudged to be against this Statute of *Magna Charta*; so it had been, if such an Ordinance had been contained in the Patent it self.

We will sell to no Man, deny to no Man, &c.] This is spoken in the Person of the King, who in Judgment of Law, in all his Courts of Justice is present: And therefore every Subject of this Realm, for Injury done to him, *in Bonis, Terris, vel Persona*, in Person, Lands, or Goods, by any other Subject, *Ecclesiastical or Temporal*, whatever he be, without Exception, may take his Remedy by the Course of the Law, and have Justice and Right for the Injury done him, *Freely*, without Sale, *fully*, without Denial; and *Speedily*, without delay; for Justice must have three Qualities, it must be *Liberæ*, free; for nothing is more Odious than Justice set to sale: *Plenæ*, full, for Justice ought not to limp, or be granted by Peace-meal: And *Celeris*, speedy: *Quia Dilatio est quædam negatio*, Delay is a kind of Denial: And when all these meet, it is both Justice and Right.

We will not deny nor delay any Man, &c.] These words have been excellently expounded by latter Acts of Parliament, that by no means common Right, or common Law, should be disturbed or delayed; no, though it be commanded under the *Great Seal*, *or Privy Seal*, *Order*, *Writ*, *Letters*, *Message*, *or Commandment whatsoever*, *from the King*, *or any other*; and that the Justices shall proceed, as if no such Writs, Letters, Order, Message, or other Commandment were come to them: All our Judges Swear to this; for 'tis part of their Oaths; so that if any shall be found Wresting the Law, to serve a Court-turn, they are Perjur'd as well as Unjust. The Common-Laws of the Realm should by no means be *delayed*, for the Law is the surest Sanctuary that a Man can take, and the strongest Fortress to protect the Weakest of all; *Lex est tutissima Cassis*, the Law is a most safe Head-piece, and *sub Clypeo Legis Nemo decipitur*,

no Man is deceived whilst the Law is his Buckler: But the King may stay his own Suit, as a *Capias pro fine*, for the King may Respite his Fine, and the like.

All Protections that are not legal, which appear not in the Register, nor warranted in our Books, are expressly against this Branch, *nulli differemus*, we will not delay any Man: As a Protection under the Great Seal, granted to any Man, directed to the Sheriffs, &c. and commanding them that they shall not Arrest him, during a certain time, at any other Man's Suit, which hath words in it, *Per Prærogativam nostram quam nolumus esse Arguendam; By our Prerogative, which we will not have disputed*: Yet such Protections have been argued by the Judges, according to their Oath and Duty, and adjudged to be void. As *Mich.* 11 *H.* 7. *Rot.* 124. a Protection granted to *Holmes* a Vintner of *London*, his Factors, Servants and Deputies, &c. Resolved to be against Law. *Pasch.* 7 *H.* 8. *Rot.* 66. such a Protection disallowed, and the Sheriff amerced for not executing the Writ, *Mich.* 13 and 14 *Eliz.* in *Hithcock*'s Case, and many other of latter time: And there is a notable Record of ancient time, in 22 *E.* 1. *John de Morshal*'s Case: *Non pertinet ad Vicecomitem de protectione Regis Judicare imo ad Curiam.*

Justice or Right.] We shall not sell, deny or delay Justice and Right; neither the *End*, which is *Justice*, nor the *Mean* whereby we may attain to the End, and that is the *Law*: Right is taken here for *Law*, in the same sence that Justice often is so called. 1. Because it is the *Right Line*, whereby Justice distributive is guided and directed; and therefore all the Commissioners of *Oier* and *Terminer*, of Goal-delivery, of the Peace, &c. have this Clause, *Facturi quod ad Justitiam pertinet, secundum Legem & Consuetudinem Angliæ*; that is, to do *Justice and Right*, according to the Rule of the Law and Custom of *England*: And that which is called Common Right, in 2 *E.* 3. is called Common-Law in 14 *E.* 3. &c. and in this sence it is taken, where it is said, *Ita quod stat Rectus in Curia, id est Legi in Curia.*

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2. The Law is called *Rectum*, because it discovereth that which is Tort, Crooked or Wrong; for as Right signifieth Law, so Tort, Crooked or Wrong, signifieth Injuries; and *Injuria est contra Jus*, Injury is against Right; *Recta Linea est Index sui & obliqui*, a Right Line is both *declaratory of it self and the Oblique*. Hereby the Crooked Cord of that which is called *Discretion*, appeareth to be unlawful, unless you take it as it ought to be, *Discretio est discernere per Legem, quid sit Justum*, Discretion is to discern by the Law what is Just.

3. It is called *Right*, because it is the best *Birth-right* the Subject hath, for thereby his Goods, Lands, Wife and Children, his Body, Life, Honour and Estimation, are protected from Injury and Wrong: *Major Hæreditas venit unicuique nostrum a Jure & Legibus, quam a Parentibus*: A greater Inheritance descends to us from the Laws, than from our Progenitors.

Thus far the very words of that Oracle of our Law, the Sage and Learned *Coke*, which so fully and excellently explains this incomparable Law, that it will be superfluous to add any thing farther thereunto.

A Confirmation of the Charters of the Liberties of England, *and of the Forest, made in the 35th Year of* Edward I.

EDward, by the Grace of God, King of *England*, Lord of *Ireland*, and Duke of *Guyen*, to all those these present Letters shall hear or see, Greeting. Know ye, that we, to the Honour of God, and of Holy Church, and to the Profit of our Realm, have Granted, for us and our Heirs, that the Charter of Liberties, and the Charter of the Forest, which were made by common Assent of all the Realm, in the time of King *Henry* our Father, shall be kept in every Point without Breach. And we will, that the same Charter shall be sent under our

Seal, as well to our Justices of the Forest, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it shall be contained, that they cause the aforesaid Charter to be published, and to declare to the People, that we have confirmed them in all Points. And that our Justicers, Sheriffs, Mayors, and other Ministers, which under us have the Laws of our Land to guide, shall allow the same Charters pleaded before them in Judgment in all their Points, that is, to wit, the Great Charter as the Common Law, and the Charter of the Forest, for the Wealth of our Realm.

Chap. 2. And we Will, that if any Judgment be given from henceforth, contrary to the Points of the Charters aforesaid, by the Justicers, or by any other our Ministers that hold Plea before them, against the Points of the Charters, it shall be undone, and holden for nought.

Chap. 3. And we Will, that the same Charters shall be sent under our Seal, to Cathedral Churches throughout our Realm, there to Remain, and shall be read before the People two times by the Year.

Chap. 4. And that all Archbishops and Bishops, shall pronounce the Sentence of Excommunication against all those, that by Word, Deed, or Council, do contrary to the foresaid Charters, or that in any Point, break or undo them. And that the said Curses be twice a Year denounced and published by the Prelates aforesaid. And if the same Prelates, or any of them, be Remiss in the Denunciation of the said Sentences; the Archbishop of *Canterbury*, and *York*, for the time being, shall compel and distrain them to the Execution of their Duties in Form aforesaid.

Chap. 5. And for so much as divers People of our Realm, are in fear, that the Aids and Tasks which they have given to us beforetime, towards our Wars, and other Businesses of their own Grant, or good Will, however such were made) might turn to Bondage to them

them and their Heirs, because they might be at another time found in the Rolls, and likewise for the Prizes taken throughout the Realm by our Ministers: We have granted for us and our Heirs, that we shall not draw no such Aids, Tasks nor Prices into a Custom, for any that hath been done heretofore, be it by Roll, or any other Precedent that may be founden.

Chap. 6. Moreover, We have granted for us and our Heirs, as well to Archbishops, Bishops, Abbots, Priors, and other Folk of Holy Church, as also to Earls, Barons, and to all the Commonalty of the Land, that for no Business from hereforth, We shall take such manner of Aids, Tasks or Prices, but by the common Assent of the Realm, and for the common Profit thereof, saving the Ancient Aids and Prises due and accustomed.

Chap. 7. And for so much, as the more part of the Commonalty of the Realm find themselves sore grieved with the Maletot of Woolls, that is, to wit, a Toll of Forty Shillings for every Sack of Wooll, and have made Petition to us for to Release the same: We, at their Request, have clearly Released it; and have granted for us and our Heirs, that we shall not take such things without their common Consent and good Will, saving to Us and our Heirs the Custom of Woolls, Skins and Leather, granted before by the Commonalty aforesaid. In Witness of which things, we have caused our Letters to be Patent. Witness *Edward* our Son, at *London*, the Tenth of *October*, and the Twenty fifth Year of our Reign.

Sententia lata super Chartas.

The Sentence of the Clergy, against the Breakers of the Articles above-written.

In the Name of the Father, the Son, and the Holy Ghost, Amen. Whereas our Soveraign Lord the King, to the honour of God, and of Holy Church, and for the common Profit of the Realm, hath granted for him and his Heirs forever, these

these Articles above-written, Robert *Archbishop of Canterbury, Primate of all England, excommunicates all his Provinces, once, twice, and thrice; Because that shortness will not suffer so much delay, as to give knowledge to all the People of England of these presents in Writing. We therefore enjoin all Persons, of what Estate soever they be, that they and every of them, as much as in them is, shall observe and maintain these Articles granted to our Sovereign Lord the King, in all Points. And all those that in any Point do resist or break, or in any manner hereafter procure, Counsel, or any ways assent to resist or break these Ordinances, or do them, by Word or Deed, openly or privily, by any manner of Pretence or Colour: We the foresaid Archbishop, by Authority in this Writing expressed, do Excommunicate and Accurse, and from the Body of our Lord Jesus Christ, and from all the Company of Heaven, and from all the Sacraments of Holy Church, do Separate and Exclude.*

NOTES.

It may be observed, that this Curse is left out of our late Printed Statute-book, though inserted at large in that Printed in three Volumes, in Queen *Elizabeth*'s days, *Anno* 1567. There is likewise another like dreadful, but more full and superb Curse, Solemnly pronounced before in the time of King *Henry* III. which being also omitted in our Modern Statute-books, I shall add here for the Reader's satisfaction.

The Sentence, or Curse, given by the Bishops, against the Breakers of the Great Charter.

IN the Year of our Lord, One thousand two hundred and fifty three, the third day of May, in the great Hall of the King at Westminster, in the Parliament, and in the Assembly of the Lord Henry, by the Grace of God, King of England, and the Lord Richard Earl of Cornwal his Brother, Roger Bigot Earl of Norfolk and Suffolk, Marshal of England, Humphry Earl of Hereford, Henry Earl of Oxford, John Earl Warren, and other Peers of the Realm of England: William

William Boniface, *by the Mercy of God, Archbishop of* Canterbury, *Primate of* England, F. *of* London, H. *of* Ely, S. *of* Worcester, E. *of* Lincoln, W. *of* Norwich, G. *of* Hereford, W. *of* Salisbury, W. *of* Durham, R. *of* Exeter, M. *of* Carlisle, W. *of* Bath, E. *of* Rochester, T. *of* St. David's, *Bishops apparelled in Pontificials, with Tapers burning, against the Breakers of the Churches Liberties, and of the Liberties or other Customs of the Realm of* England, *and namely, of these which are contained in the Charter of the common Liberties of* England, *and Charter of the Forest, have denounced the Sentence of Excommunication in this Form. By the Authority of Almighty God, the Father, the Son, and the Holy Ghost, and of the Glorious Mother of God, and perpetual Virgin* Mary, *of the Blessed Apostles* Peter *and* Paul, *and of all Apostles, and of all Martyrs, of Blessed* Edward King *of* England, *and of all the Saints of Heaven: We Excommunicate, Accurse, and from the Benefits of our Holy Mother the Church, we Sequester All those that hereafter willingly and maliciously deprive or spoil the Church of her Right: And all those that by any Craft or Wiliness do Violate, Break, Diminish, or change the Churches Liberties, and free Customs contained in the Charters of the common Liberties, and of the Forest, granted by our Lord the King, to Archbishops, Bishops, and other Prelates of* England; *and likewise to the Earls, Barons, Knights, and other Freeholders of the Realm: And all that secretly or openly, by Deed, Word or Council,* do make Statutes, *or observe them being made, and that bring in Customs, or keep them when they be brought in, against the said Liberties, or any of them, the Writers, the Law-makers, Counsellors, and the Executioners of them, and all those that shall presume to judge against them. All and every which Persons before-mentioned, that wittingly shall commit any of the Premises, let them well know, that they incur the foresaid Sentence,* ipso facto, [i. e. *upon the Deed done.*] *And those that commit ought ignorantly, and be admonished, except they reform themselves within fifteen days after the time of their Admonition, and make full Satisfaction for that they have done, at the will of the Ordinary, shall be from that time forth wrapped in the said Sentence; and with the*

same Sentence we burden all those that presume to disturb the Peace of our Sovereign Lord the King, and of the Realm. To the perpetual Memory of which thing, we the aforesaid Prelates have put our Seals to these presents.

So Zealous were our Ancestors to preserve their Liberties from Incroachments, that they employed all the strength of Humane Policy and Religious Obligations, to secure them intire and inviolate. And since this Act is still in as much force as the Act against Conventicles, I cannot fathom the Reason why our Prelates should not as well hold themselves obliged twice a Year to accurse the Infringers thereof, as to prosecute Protestant Dissenters: However we may note, that by this Statute, Chap. 2. it is expresly provided, that if any Judgments be given from that time forwards against any of the points of *Magna Charta*, they shall be annull'd and holden for nought; therefore Query, whether the Conviction of Protestant Dissenters by a Justice, and spoiling them of their Goods without any Tryal and Conviction by a Jury, (which is expresly against the 29th Chapter of *Magna Charta*) ought not to be taken notice of, and redress'd, and the original Promoters thereof to be Curs'd by my Lords the Bishops as aforesaid?

A Statute made Anno 34 Edw. 1. *commonly called* de Tallagio non Concedendo.

CHAP. I.

The King, or his Heirs, shall have no Tallage or Aid without consent of Parliament.

NO Tallage or Aid shall be taken or levyed by Us, or our Heirs, in our Realm, without the good Will and Assent of Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other Freemen of the Land.

CHAP.

CHAP. II.

Nothing shall be perceived to the King's Use, without the Owners consent.

NO Officer of ours, or of our Heirs, shall take Corn, Leather, Cattel, or any other Goods, of any manner of Person, without the good Will and Assent of the Party to whom the Goods belonged.

CHAP. III.

Nothing shall be taken of Sacks of Woull, by Colour of Maletot.

NOthing from henceforth shall be taken of Sacks of Woull, by Colour, or occasion of Maletot.

CHAP. IV.

All Laws, Liberties, and Customs, confirmed.

WE Will and Grant, for Us and our Heirs, That all Clerks, and Lay-men of our Land, shall have their Laws, Liberties, and free Customs, as largely and wholly, as they have used to have the same at any time when they had them. (a) And if any Statutes have been made by Us and our Ancestors, or any Customs brought in contrary to them, or any manner of Article contained in this present Charter; We Will and grant, that such manner of Statutes and Customs shall be void and frustrate for evermore.

CHAP. V.

Pardon granted to certain Offenders.

MOreover we have pardoned *Humphrey Bohun*, Earl of *Hereford* and *Essex*, Constable of *England*; *Roger* Earl of *Norfolk* and *Suffolk*, Marshal of *England*, and other Earls, Barons, Knights, Esquires, and namely, *John de Ferrariis*, with all others being of their Fellowship, Confederacy, and Bond, and also of other that hold 20 *l.* Land in our Realm, whether they hold of us in Chief, or of others, that were appointed at a day certain to pass over with us into *Flanders*, the Rancour and Evil will borne against us, and all other Offences, if any they have committed against us, unto the making of this present Charter.

CHAP. VI.

The Curse of the Church shall be pronounced against the Breakers of this Charter.

AND for the more Assurance of this thing, we will and grant, that all Archbishops and Bishops for ever, shall read this present Charter in Cathedral Churches twice in the Year, and upon the Reading thereof in every of their Parish Churches, shall openly Denounce accursed all those that willingly do procure to be done any thing contrary to the Tenour, Force and Effect of this present Charter, in any point and Article. In witness of which thing we have set our Seal to this present Charter, together with the Seals of the Archbishops, Bishops, which voluntarily have Sworn, that as much as in them is, they shall observe the Tenour of this present Charter in all Cases and Articles, and shall extend their faithful Aid to the keeping thereof, &c.

The Comment.

THE word Tallage is derived from the *French* word *Tailler*, to share or cut out a-part, and is Metaphorically used for any Charge, when the King, or any other, does cut out, or take away, any part, or share, out of a Man's Estate, and being a general word, it includes all Subsidies, Taxes, Tenths, Aids, Impositions, or other Charges whatsoever.

The word *Malevs* signifies an Evil (that is, an unjust) Toll, Custom, Imposition or Sum of Money.

The occasion of making this Statute was this; King *Edward* being injured by the French King, resolves to make War against him, and in order thereunto requires of *Humphrey de Bohun* Earl of *Hereford* and *Essex*, and Constable of *England*, and of *Roger Bigot* Earl of *Norfolk* and *Suffolk*, and Marshal of *England*, and of all the *Earls*, *Barons*, *Esquires*, and *Freeholders* of 20 *l.* Land, whether they held of him in *Capite*, to contribute towards such his Expedition, that is, to go in Person, or find sufficient Men in their places in his Army; which the Constable and Marshal, and many

of

of the *Knights* and *Esquires*, and especially this *John Ferrers* taking part with them, and all the Free-men, stoutly denied, unless it were so ordained and determined by common consent in Parliament, according to Law. And it seems the Contest grew so hot, that *Baker's* Chronicle, *Folio* 99. relates a strange Dialogue that passed between them, *viz.* That when the *Earl-Marshal* told the King, *That if his Majesty pleased to go in Person, he would then go with him, and march before him in the Van-Guard, as by right of Inheritance he ought to do; but otherwise he would not stir.* The King told him plainly, He should go with any other, though he went not in Person. *I am not so bound*, (saith the Earl) *neither will I take that Journey without You.* The King swore, *By God, Sir Earl, you shall either go or Hang.* And *I Swear by the same Oath* (said the Earl) *I will neither go nor Hang.* And so the King was forc'd to dispatch his Expedition without them. And yet (saith my Lord *Coke*) although the King had conceived a deep Displeasure against the Constable, Marshal, and others of the Nobility, Gentry and Commons of the Realm, for denying that which he so much desired, yet, for that they stood in defence of their Laws, Liberties, and Free Customs, the said King *Edward* the First, who, as Sir *William Herle*, Chief Justice of the Common Pleas, who lived in his time, and served him, said, in the time of King *Edward* the Third) was *the wisest King that ever was*; did, after his return from beyond the Seas, not only consent to this Statute, whereby all such Tallages and Impositions are forbidden for the future, but also passes a Pardon to the said Nobles &c. of all Rancour, Ill-will and Transgressions, *If any they have committed*; which last words were added, lest by acceptance of a Pardon of Transgression, they should implicitly confess that they had Transgressed; so careful were the Lords and Commons in former times to preserve the Ancient Laws, Liberties, and free Customs of their Country.

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But note, these words, *Si quas fecerint, If any they have committed*, are left out in all the Printed Books of Statutes; but they are in this Statute recited by *Coke*, in his second Book of Institutes, *Fol.* 533. and specially noted, which he would never have done, if it had not been so in the *Rolls*. And since 'tis probable there may be many more like *Omissions*, *Mistakes* and *Falsifications*, crept into the Prints, and for that the *Record*, and not the printed *Statute-book*, (varying from the *Records*) is *the Law*, It were to be wished, that all the *Rolls of Acts of Parliament* were carefully, by some Persons of Learning and Integrity, view'd and compar'd with the Prints, and notice taken of all such *Variations*, and of *Errors* committed in the Translations, and of any Statutes of a publick Import, if in force, that were *never Printed*, and the same to be made publick.

Anno 25 *Edw.* 3.

CHAP. II.

A Declaration what Offences shall be adjudged Treason.

WHereas divers Opinions have been before this time, in what Case Treason shall be said, and in what not. (2.) The King, at the Request of the Lords, and of the Commons, hath made a Declaration in the manner as hereafter followeth, that is to say, When a Man doth Compass or Imagine the Death of our Lord the King, or of our Lady his Queen, or of their eldest Son and Heir. (3.) Or if a Man do violate the King's Companion, or the King's Eldest Daughter unmarried, or the Wife of the King's Eldest Son and Heir. (4.) Or if a Man do Levy War against our Lord the King in his Realm, or be Adherent to the King's Enemies in his Realm, giving them Aid and Comfort in the Realm, or elsewhere, and thereof be provably Attainted of open Deed by the People of their Condition. (5.) And if a Man Counterfeit the King's Great or Privy-Seal, or his Money. (6.) And if a Man bring false Money into this Realm, Counterfeit

feit to the Money of *England*, as the Money called *Lusheburgh*, or other, like to the said Money of *England*, knowing the Money to be false, to Merchandise, or make Payment, in Deceit of our said Lord the King, and of his People. (7) And if a Man Slay the Chancellor, Treasurer, or the King's Justice of the one Bench or the other, Justices in *Eyre*, or Justices of Assize, and all other Justices Assigned to Hear and Determine, being in their Places doing their Offices. (8) And it is to be understood, that in the Cases above rehearsed that ought to be judged Treason, which extends to our Lord the King, and of his Royal Majesty. (9) And of such Treason the Forfeiture of the Escheats pertaineth to our Lord, as well of the Lands and Tenements holden of others, as of himself. (10) And moreover, there is another manner of Treason, that is to say, when a Servant slayeth his Master, or a Wife her Husband, or when a Man, Secular or Religious, slayeth his Prelate, to whom he oweth Faith and Obedience. (11) And of such Treason the Escheats ought to pertain to every Lord of his own Fee. (12) And because that many other like Cases of Treason may happen in time to come, which a Man cannot think nor declare at this present time. It is Accorded, That if any other Case, supposed Treason, which is not above specified, doth happen before any Justices, the Justices shall tarry without any going to Judgment of the Treason, till the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or other Felony. (13) And if percase any Man of this Realm, Ride Armed covertly or secret with Men of Arms, against any other to Slay him, or Rob him, or Take him, or Retain him, till he hath made Fine and Ransom for to have his Deliverance; it is not the mind of the King, nor his Council, that in such Case it shall be judged Treason, but shall be judged Felony, or Trespass, according as the Law of the Land of old time used, and according as the Case requireth. (14) And

if

if in such Case, or other like, before this time any Justices have judged Treason, and for this cause the Lands and Tenements have come into the King's Hands as Forfeit; the chief Lords of the Fee shall have the Escheats of the Tenements holden of them, whether that the same Tenements be in the King's Hands, or in others, by Gift, or in other manner. (15) Saving always to our Lord the King the Year and the Waste, and the Forfeitures of Chattels, which pertain to him in the Cases above-named. (16) And that the Writs of *Scire facias* be granted in such Case against the Land-Tenant, without other Original, and without allowing any Protection in the said Suit. (17) And that of the Lands which be in the King's Hands, Writs be granted to the Sheriffs of the Counties where the Lands be, to deliver them out of the King's Hands without delay.

The Comment.

TREason is derived from *Tradir*, which signifies Treacherously to betray; When it concerns the Government and the Publick, 'tis called *High Treason*, but against particular Persons, as a Wife killing her Husband, a Servant his Master, &c. it is *Petty Treason*.

High Treason, in the Civil Law, is called *Crimen Læsæ Majestatis*, a Crime wronging *Majesty*, but in our Common-Law-Latin, *Alta Proditio*, and in an Indictment for this Offence, the word *Proditorie* must be in.

Before the making this Act, so *many things* were charged as *High Treason*, that no Man knew how to behave himself; Now by this Statute, the Particulars of that Grand Crime are reckoned up, and all others excluded, till declared by Parliament. And the setling of this Affair was esteemed of such Importance to the Publick-Weal, that the Parliament wherein this Act passed, was called long after, *Benedictum Parliamentum*, The *Blessed Parliament*.

The Substance of this Statute is branched out by my Lord *Coke*, 3d part of *Instit.* Fol. 3. into six Heads, viz.

The

The first concerning Death, by compassing or imagining the Death of the King, Queen, or Prince, and declaring the same by some Overt-deed. By killing and murdering of the Chancellor, Treasurer, Justices of either Bench, Justices in Eyre, Justices of Assise, Justices of *Oier* and *Terminer*, in their Places doing their Offices.

The second is to Violate, that is, to carnally know the Queen, the King's Eldest Daughter unmarried, the Prince's Wife.

The third is, Levying War against the King.

The fourth is, adhering to the King's Enemies, within the Realm or without, and declaring the same by some Overt-Act.

The fifth is, Counterfeiting the Great, the Privy Seal, or the King's Coin.

The sixth and last, by bringing into this Realm Counterfeit Money, to the likeness of the Kings Coin.

Now as to the particular Exposition of the several parts of this Statute:

1. *What a Man* doth compass, &c. in the Original it is *Quant Home*, which extends to both Sexes; but one that is *Non Compos Mentis*, or an Infant within the Age of Discretion, is not included; but all *Aliens* within the Realm of *England*, being thereby under the King's Protection, and owing a local Allegiance, if they commit Treason, may be punish'd by this Act, but otherwise it is of an *Enemy*.

2. *To compass and imagine*, Is to contrive, design or intend the Death of the King; but this must be declared by some Overt-Act. But declaring by an open Act, a design to *Depose* or *Imprison* the King, is an Overt-Act to manifest the compassing his Death. For they that will depose their King, will not stick to Murder him, rather than fail of their end, and (as King *Charles* the First excellently observed, and lamentably experienced) *There are commonly but few steps between Prisons, and the Graves of Princes.*

3. By the word *King* is intended, 1. A King before his Coronation, as soon as ever the Crown descends upon

upon him, for the Coronation is but a Ceremony. 2. A King *de Facto*, and not *de Jure*, is a King within this Act; and a Treason against him is punishable, though the Right Heir get the Crown. 3. A Titular King, as the Husband of the Queen, is not a King within this Act, but the Queen is, for the word *King* here includes both Sexes.

4. What is to be understood by *the King's Eldest Son and Heir within the Act?* I answer, 1. A second Son, after the Death of the first Born, is within the Act, for he is the Eldest. Secondly, The eldest Son of a Queen Regnant, is as well within the Statute, as of a King. Thirdly, The Collateral Heir Apparent, or Presumptive, is not within this Statute. *Roger Mortimer* Earl of *March*, was in *Anno Dom.* 1387 (11 *Rich.* 2.) proclaimed Heir Apparent. *Anno* 39 *Hen.* 6. *Richard* Duke of *York* was likewise proclaimed Heir apparent, and so was *John de la Poole*, Earl of *Lincoln*, by *Richard* III. And *Henry* Marquess of *Exeter*, by King *Henry* VIII. But none of these, or the like, are within the Purview of this Statute, saith my Lord *Coke*, 2 *Instit.* Fol. 9.

5. Note, Whereas in the Printed Statute-Books, it is there said *Probably Attainted*, the same is a great Error; for the words of the Record are, *Et de eo* PROVABLEMENT *Sui Attainti: And shall be thereof* PROVABLY *Attainted*: And I cannot but admire that such a gross Mistake should be suffered, since my Lord *Coke* has so expressly observed the difference, in these words following, 3 *Instit.* Fol. 12. *In this Branch* (saith he) *four things are to be observed: 1. This word* [*Provablement*] *Provably, that is, upon* direct and manifest Proof, *not upon* Conjectural Presumptions, *or* Inferences, *or* strains of Wit, *but upon good and sufficient Proof. And herein the Adverb* [Provablement] Provably, *hath a great force, and signifieth* a direct and plain Proof; *which word the King, the Lords, and Commons, in Parliament did use, for that the Offence was heinous, and was so heavily, and severely punished, as none other the like; and therefore the Offender*

Offender must Provably *be Attainted, which words are as forcible,* as upon direct and manifest Proof. *Note, the word is not* [Probably] *for then* Commune Argumentum *might have served; but the word is* [Provably] *be Attainted. Secondly, This word* [Attaint] *necessarily implieth that he be proceeded with, and Attainted according to the* due Course *and Proceedings of Law, and not by* Absolute Power, *or by other means, as in former times had been used. And therefore if a Man doth adhere to the Enemies of the King, or be slain in open War against the King, or otherwise die before the Attainder of Treason,* he forfeiteth nothing, *because (as that Act saith) he is* not Attainted: *Wherein this Act hath altered that, which before this Act, in Case of Treason, was taken for* Law. *And the Statute of* 34 Ed. 3. Cap. 12. *saves nothing to the King, but that which was in Fee, and pertaining to the King at the making of that Act. And this appeareth by a Judgment in Parliament in* Ann. 29. H. 6. Cap. 1. *That* Jack Cade *being slain in open Rebellion, could no way be punished, or forfeit any thing, and therefore was Attainted by that Act of* High Treason. Thirdly, *Of open Deed, per Apertum Factum,* these words strengthen the former Exposition of [*Provablement,*] an *Overt-Act* must be alledged in every Indictment upon this Act, and proved. Compassing by bare words is not an Overt-Act, as appears by many Temporary Statutes against it. But there must be some open Act, which must be *manifestly proved.* As if divers do Conspire the Death of the King, and the manner how, and thereupon provide *Weapons, Powder, Poison, Harness, and Letters,* and the like, for the Execution of the Conspiracy. If a Man be Arraigned upon an Indictment of High Treason, and stand Mute [that is, refuse to Plead] he is not to be Pressed to Death, but shall have the same Judgment, and incur such Forfeiture, as if he had been Convicted by Verdict, or had confessed it. For this standeth well with this word [*Provablement*] for *fatetur facinus qui judicium fugit.* But otherwise it is in case of Petit Treason, Murder, or other Felony. If a Subject Conspire with a Foreign

Prince,

Prince, to Invade the Realm by open Hostility, and prepare for the same by some Overt-Act, this is a sufficient Overt-Act for the Death of the King. Fourthly, The Composition and Connection of the words are to be observed, *viz.* [*Thereof be Attainted by open Deed.*] This (as was resolved by the Justices in *Easter* Term, 35 *Eliz.*) relateth to the several and distinct Treasons before expressed (and specially to the *Compassing and Imagination of the Death of the King*, &c. for that is a Secret in the Heart) and therefore one of them cannot be an Overt-Act for another; as for example: A Conspiracy is had to Levy War, this (as hath been said and so resolved) is no Treason by this Act, until it be levyed, therefore it is no Overt-Act or manifest Proof of the Compassing the Death of the King within this Act; for the words are [*de eo, &c. thereof*] that is, of the Compassing of the Death. Divers latter Acts of Parliament have Ordained, That Compassing by bare Words or Sayings, should be Treason, but are all either Repealed or Expired. And it was wont to be said, bare Words may make an Heretick, but not a Traytor, without an Overt-Act. And the Wisdom of the Makers of this Law would not make *Words only* to be Treason, seeing such variance commonly among the Witnesses is about the same, as few of them agree together. But if words be set down in Writing by the Delinquent himself, that is a sufficient Overt-Act within this Statute.

In the Preamble of the Statute of 1 *Mar.* (concerning the Repeal of certain Treasons declared after this Statute of 25 *Edw.* 3. and before that time, and bringing back all things to the measures of this Statute,) It is agreed by the whole Parliament, *That Laws justly made for the Preservation of the Common-wealth, without extream Punishment, are more often obeyed and kept, than Laws and Statutes made with great and extream Punishment. And in special such Laws and Statutes so made, whereby not only the ignorant and rude unlearned People, but also learned and expert People, minding Honesty, are often-times trapped and*

snared

feared; yea, many times for Words only, *without other Fact or Deed done or perpetrated.* Therefore this Act of 25 *Edw.* 3. doth provide that there must be an Overt-Act. But words without any Overt-Act, are to be punish'd in another degree, as an high Misprision.

By People of their Condition.] That is, *per pares*, by their Equals.

7. As to Treason, *by Levying War against the King*, we must note, that though Conspiring or Compassing to Levy War, without a War *de facto*, be no Treason, yet if many Conspire a War, and only some few Actually Levy it, all are guilty of the Treason. Raising Force to burn, or throw down a particular Inclosure, is only a *Riot*, but if it had been to have gone from Town to Town to throw down all Inclosures, or to change Religion, or the like, it were Levying of War, because the intended Mischief is publick. Holding a Fort or Castle against the King's Forces, is Levying of War.

8. As touching the *Interpretative Treason* by *Killing* the Chancellor, Treasurer, Justice of *one* or the *other Bench*, Justice in *Eyre*, or of *Assise*, or *Oyer* and *Terminer*. Note, 1. This extends but only to the Persons here named, not to the Lord Steward, Constable, or Marshal, or Lords of Parliament. Secondly, It extends to those only during their Office. Thirdly, It extends only to Killing, not Wounding without Death.

But by the Statute 3 *H.* 7. Cap. 14. Compelling to Kill the King, or any of his Council, is made Felony.

9. Counterfeiting the *Great* or *Privy Seal*, is Treason; but it must be an Actual Counterfeiting thereof, Compelling to do it is no Treason: Affixing the Great Seal by the Chancellor, without Warrant, is no Treason: Fixing a new Great Seal to another Patent, is a great *Misprision*, but no Treason, being not a Counterfeiting within this Act: But Aiders and Consenters are within this Act. The Counterfeiting of the Privy Signet, or Sign Manual, is no Treason within this Act, but made by the Statute, 1 *Mar.* c. 6.

10. Trea-

10. Treason concerning Coin; is Counterfeiting the King's Coin; and this was Treason at Common Law, and Judgment only as of Petit Treason: But Clipping, &c. being made Treason by subsequent Statutes, the Judgment is to be Drawn, Hang'd and Quarter'd. Money here extends only to the Proper Money of this Realm. But now by the 1 Mar. c. 6. Forging or Counterfeiting Money made current by Proclamation, is High Treason, and by 14 Eliz. c. 3. Forging of Foreign Coin, not current here, is Misprision of Treason in the Forgers, their Aiders and Abettors. And not that the base Forging of the King's Coin, without Uttering, is Treason.

The second Offence concerning Money here declared to be Treason, is, If any Person bring into the Realm Counterfeit Money. Where note, 1. It must be Counterfeit. 2. Counterfeited to the similitude of English Money. 3. It must be brought from a Foreign Realm, and therefore not from *Ireland*. 4. It must be brought knowingly. 5. *Brought*, and not barely uttered here. But by the Statute *De Moneta*, if false or clipt Money be found in a Person's hands, and he be suspitious, he may be Arrested till he can clear himself. 6. He must Merchandize therewith, that is, make Payment thereof.

11. As this Statute leaves all other doubtful Matters to be declared Treason in Parliament, but not to be punish'd as such till so declared. So in succeeding Kings Reigns, abundance of other Matters were declared Treason, which being found very Grievous and Dangerous, by the Statute of 1 *Mar.* Cap. 1. it is Enacted, *That thenceforth no Act, Deed, or Offence, should be Adjudged Treason, or Misprision of Treason, by Words, Writing, Coyning, Deeds, or otherwise whatsoever, shall be taken, had, deemed or Adjudged to be High Treason, Petty Treason, or Misprision of Treason, but only such as be declared and expressed to be Treason, Petty Treason, or Misprision of Treason, by this Statute of 25 Edw. 3.*

12. The

12. The Offences made High Treason by Statutes since this First of *Mary*, are as follow.

Refusing the Oath of *Supremacy* upon second Tender, is *Treason* by 1 *Eliz.* Cap. 1. but no Corruption of Blood; so likewise is Extolling the Power of the Bishop of *Rome*, a *Premunire*, and the bringing in of *Bulls*, or putting them in Execution, or Reconciling to the Church of *Rome*, is Treason by the same Statute. Bringing in *Agnus Dei*'s is a Premunire, 13 *Eliz.* Cap. 2. Also absolving Subjects from their Obedience, or Reconciling them to the Obedience of *Rome*, is Treason, 27 *Eliz.* Cap. 2. So is it likewise for a Priest coming into *England*, not submitting in two days. The like for English Men in Foreign Seminaries.

Another Statute of King *Edward* the Third.

Anno 2 *Edw.* 3. *Cap.* 2.

In what Cases only *Pardon* of Felony shall be granted, &c.

ITem, *Whereas Offenders have been greatly encouraged, because the Charters of* Pardon *have been so easily granted in times past of Man slaughters, Robberies, Felonies, and other Trespasses against the Peace.* (2) *It is Ordained and Enacted, that such Charters* shall not be granted, but only where the King may do it by his Oath, *that is to say, where a Man slays another in his own Defence, or by Misfortune.* (3) *And also they have been encouraged, because that the Justices of the Goal-Delivery, and of* Oyer *and* Terminer, *have been procured by great Men, against the Form of the Statute made in the 27th Year of the Reign of King* Edward, *Grandfather to our Lord the King, wherein is contained, that Justices assigned to take Assizes, if they be Lay-Men, shall make deliverance; and if the one be a Clerk, and the other a Lay man, that the Lay Judge, with another of the Country associate to him, shall deliver the Goals.* (4) *Wherefore it is Enacted, That Justices shall not be made*

against the Form of the said Statute. (5) And that the Assises, Attaints, and Certifications be taken before the Justices commonly assigned, which should be good Men and Lawful, having knowledge of the Law, and wise after the Form of another Statute made in the time of the said King Edward the First. (6) And that the Oyers and Terminers shall not be granted, but before the Justices of the one Bench or the other, or the Justices Errants; and that great Riots, or horrible Trespasses, and of the King's special Grace, after the Form of the Statute thereof ordained in time of the said Grandfather, and none otherwise.

The Comment.

Touching this Statute, and several others to the same purpose, as 14 Edw. 3. Cap. 14. and 10 Edw. 3. Cap. 2. and 13 R. 2. Cap. 1. and 16 R. Cap. 6. &c.

We shall only give you the words of Coke in the third part of his Instit. Fol. 236.

What things the King may pardon, and in what manner, and what he cannot pardon, falleth now to be treated of.

IN case of death of Man, Robberies and Felonies against the Peace, divers Acts of Parliament have *Restrained the power of granting Charters of Pardons.* First, That no such Charters shall be granted, but in case *where the King may do it by his Oath.* Secondly, That no Man shall obtain *Charters out of Parliament*, Stat. 4 Edw. 3. Cap. 13. And accordingly in a Parliament Roll it is said, [for the Peace of the Land it would much help, if good Justices were appointed in every County, if such as be let to Mainprize do put in good Sureties, as Esquires or Gentlemen: And that *no Pardon were granted but by Parliament.*] Thirdly, For that the King hath granted Pardons of Felonies upon false Suggestions; it is provided, that every Charter of Felony, which shall be granted at the Suggestion of any, the name of him that maketh the Suggestion,

shall

shall be comprised in the Charter; and if the Suggestion be found untrue, the Charter shall be disallowed. And the like provision is made by the Statute of 5 *H.* 4. Cap. 2. for the Pardon of an Approver.

Fourthly, It is provided that no Charter of Pardon for Murder, Treason, or Rape, shall be allowed, &c. if they be not specified in the same Charter. Statute 13 *R.* 2. Before this Statute of 13 *R.* 2. by the Pardon of *all Felonies*, Treason was pardoned, and so was Murder, &c. At this day, by the Pardon of all Felonies, the Death of Man is not pardoned. These be excellent Laws for Direction, and for the Peace of the Realm. But it hath been conceived, (which we will not question) that the King may dispence with these Laws by a *Non Obstante*, (notwithstanding) be it General or Special (albeit we find not any such Clauses of *non Obstante*, notwithstanding to dispense with any of these Statutes (but of late times.) These Statutes are excellent Instructions for a Religious and prudent King to follow, for in these Cases, *Ut summa potestatis Regiæ est posse quantum velit, sic Magnitudinis est velle quantum possit.* (As it is the highest Kingly power to be able to Act what he Wills; so it is his Greatness and Nobleness to Will only what he lawfully can.) Hereof you may read more in Justice *Standford*, Lib. 2. Cap. 32. in divers places of that Chapter, of his grave Advice in that behalf. Most certain it is, that the *Word of God* has set down this undisputable General Rule, *Quia non profertur Cito Contra malos sententia, filiis hominum sine timore ullo perpetrant.* (Because Sentence against evil Men is not speedily executed, therefore the Hearts of the Children of Men are set in them to do evil.) And thereupon the Rule of Law is grounded. *Spes Impunitatis Continuum Affectum tribuit delinquendi*, [the hope of Impunity encourageth Offenders.] *Et veniæ facilitas Incentivum est Delinquendi*, [and the Facility of obtaining Pardon, is an Incentive to commit Offences.] This is to be added, that the Intention of the

the said Act of 13 R. 2. was not that the King should grant a *Pardon of Murder by express Name* in the Charter; but because the whole Parliament conceived, that he should never pardon *Murder by special Name*, for the Cause aforesaid; therefore that provision made, which was (as in other Cases I have observed) grounded upon the Law of God, *Quicunque effuderit humanum sanguinem, fundetur sanguis illius; ad imaginem quippe Dei creatus est homo nec aliter Expiari potest, nisi per ejus sanguinem, qui alterius sanguinem effudit.* [Whosoever shall shed Man's Blood, by Man also shall his Blood be shed, because Man was created after the Image of God; neither can it be expiated otherwise than by his Blood, who spilt the Blood of another.] And the words of every Pardon, is after the Recital of the Offence, *Nos pietate moti*, &c. we being *moved with Pity*, &c. But it can be no Piety, to violate an express Law of God, by letting Murder scape unpunish'd. Thus *Coke*, whereby we see what Opinion he had of such Pardons.

A brief Digression concerning the Nature of APPEALS.

THis Discourse of Pardons, puts us in mind of another kind of Legal Prosecution called an *Appeal*; of which it may be very convenient to give the Reader some brief account. You must know then, for several Offences for which a Man deserveth Death, and particularly for *Murder*, there are two ways to bring him to answer for the same, one by *Indictment*, which is at the King's Suit, and the other by *Appeal*, which is at the Suit of a Party which is wronged or injured by the Murder; as a Woman whose Husband, or a Child, or Brother, whose Father or Brother is killed.

Now upon an Indictment, if the Offender be found Guilty, because it is to be at the Suit of the King, it has been said by some, may be and too often, a Pardon has been obtained (though even *That* too be against Law;

Law, as appears by the Premisses.) But in an Appeal all agree, the King can grant no Pardon. Nay, if a Person be tryed by Indictment, and Acquitted, or Convicted, and get a Pardon, yet an Appeal may be brought, and if he be thereupon Convicted, notwithstanding such his former Acquital, or Pardon, he must be Hanged.

The word Appeal is derived from the French Verb *Appeller*, to Call, because he or she that brings it, Calls the Defendant to Judgment; but the meaning thereof is all one with an Accusation, and is peculiarly in legal signification applied to Appeals of Three sorts: Farts, An Appeal brought by an Heir Male, for some wrong done to his Ancestor, whose Heir he is. Secondly, Of wrong done to an Husband, and is by the Wife only, if it be for the Death of her Husband, to be Prosecuted. The third is, Of wrongs done to the Appellants themselves, as for Robbery, Rape, or Maim, *Coke 2 Instit.* Sect. 500.

Note, That this Appeal must be brought *within a year and a day* after the Murder is committed. For afterwards it cannot be brought at all. And anciently it was customary not to bring an Indictment for the King, till after the year and the day, waiting in the mean time for the Prosecution of the Party; but this was found very inconvenient, for the Party was frequently compounded with, and at the years end the business was forgot, and so Offenders escaped Justice.

And therefore the same was altered by the Statute 3 *Hen.* 7. cap. 1. whereby it is Enacted, *That the Coroner shall do his Office, and the Offenders may be Arraigned at any time within the Year, at the King's Suit, but if Acquitted, yet the Party within the year and day, should have liberty to bring an Appeal against such Person, either Acquitted or convicted, if the Benefit of the Clergy be not before [illegible]. And in order thereunto, that when any Person happened to be Acquitted for the Death of a Man, within the year, the Justices before whom he is Acquitted, shall not suffer him to go at Large, but either to remit him again to the*

Prison, or else to let him to Bail after their Discretion, till that the day and the year be passed, that he may be forthcoming to answer an Appeal, if it shall happen to be brought.

Thus that Statute; as to the latter Clause whereof, you see the Judges have power, in case of Acquittal, to keep the Party in Prison still, till the day and year be over; or else to admit him to Bail; and though this be left to their Discretion, yet it must not be such a Discretion, as confounds all Discretion; but they must weigh the Circumstances, and go according to Law and Judgment; and certainly the Law intended such Bail, if any be accepted, should be bound Body for Body, for otherwise it seems not Security. And therefore many wise Men wondered, when Count *Coningsmark* was Acquitted on the Indictment for the Barbarous Murder of Esquire *Thynn*, that he was suffered to go so soon abroad, for being a Stranger, he was never like to come again into *England*; and being so rich, what values he to discharge the Forfeitures of his Sureties Recognizances, which likewise may be easily compounded. At most, the Forfeiture is to the King, and what is that to the next Heir or Kinsman? He is by this means Outed of his Legal Right to Revenge the Blood of his near and dear Relation. *Sed hæc Obiter.*

The Form of an Appeal of Murder.

I. C. Hic Instanter Appellat W. F. &c. (In English thus) I here instantly Appeals W. F. of the Death of his Brother H. C. For that whereas the aforesaid H. was, in the Peace of God and the King, at Tonbridge in the County of Kent, the twenty eighth day of March, in the thirty fourth year of the Reign of our Lord Charles the Second,

&c. at seven a Clock in the Evening of the same day, came the said W. F. as a Felon of our Lord the King, in a premeditated Assault, with Force and Arms, &c. And upon him the said H. C. then and there Feloniously an Assault did make, and with a certain Sword, of the price of twelve pence, which he then and there in his right Hand did hold, the aforesaid H. upon his Head did strike, and one mortal Wound of two Inches long in the forepart of his Head, even unto the Brain to the said H. did then and there Feloniously give; of which said Wound the said H. for three days then next following did languish, and then, viz. the [such a] day of [such a Month] he there died, [or if the case be so, instantly died.] And so the said W. H. as a Felon of our Lord the King, the aforesaid H. Feloniously did Kill and Murder, against the Peace of our said Lord the King, his Crown and Dignity: And that this he did wickedly, and as a Felon, against the Peace of God, and our Lord the King, the aforesaid offers that the same be deraigned, as the Court of our Lord the King shall think meet. Diversity of Courts and Jurisdictions, Written in the time of King *Henry* VIII.

1. Note, That a Woman cannot now bring an Appeal for the Death of any other Ancestors, being barred therefrom by *Magna Charta*, Cap. 34. whereas (as you have heard) it is provided, that none shall be taken or Imprisoned upon the Appeal of any Woman, for

for the Death of any Person, but only of her Husband. But she may at this day bring an Appeal for Robbery, &c. for therein she is not by that Statute restrained. *Coke 3. Inst.* Fol. 68.

2. The Woman that brings an Appeal for the Death of her Husband, must be his Wife, not only *de facto* but *de jure*, not only called and reputed, or cohabiting with him, but actually and legally Married to him; and of such a Wife the ancient Law-book speaks, *De morte viri inter Brachia sua Interfecti*, the Husband is killed within her Arms, that is, whilst he was legally in her Possession; but that the Appellant and the Person killed, were not ever lawfully coupled in Matrimony, is a good Plea in an Appeal.

3. This right of Appeal for the Death of her Husband is annexed to her Widow-hood, as her *Quarentine* is, and therefore, if the Wife of the Dead Marry again, her Appeal is gone, even although the second Husband should die within the year and day after the Murder of the first: For she must, all the while before the Appeal be brought, continue *Femina viri sui*, his Widow upon whose Death the Appeal is brought. Furthermore, If she bring the Appeal during her Widow-hood, and take a Husband whilst it is depending, the Appeal shall Abate (that is, be out of doors) for ever. Nay, if on her Appeal she hath Judgment against the Defendant, if afterward she take an Husband before the Defendant be Hanged, she can never have Execution of Death against him.

4. By the Statute of *Glouc.* made in the sixth year of King *Edward* I. Cap. 9. it is Enacted, That if an Appeal set forth the Deed, the Year, the Day, the Hour, the Reign of the King, and the Town where the Deed was done, and with what Weapon the Party was slain, the Appeal shall stand in effect, and shall not be abated for default of fresh Suit, if the Party shall Sue within the year and the day after the Deed done.

5. As for *the year and day* here mentioned, it is to be accounted for the whole year according to the Calendar,

dar, and not for twelve Months, at twenty eight days to the Month. So likewise the day intended is a natural day; and this year and day must be accounted *after* the Felony and Murder committed. Now if a Man be Mortally Wounded on the first day of *May*, and thereof Languishes to the first day of *June*, and then dies; the Question here arises, Whether the year and the day allowed for bringing the Appeal, is to be reckoned from the giving the Wound, or the time of Death. Some have held the former: For that the Death ensuing, hath relation to it, and that is the Cause of the Death, and the Offender did nothing the day of the Death. But the truth is, the year and day shall be accounted only from the first of *June*, the day of the Death; for before that time no Felony was committed. And thus it hath often been resolved and adjudged, and the reason aforesaid grounded upon Relation (which is a Fiction in Law) holdeth not in this Case. *Coke 3 Instit.* Fol. 320.

6. If an Appeal of Murder be brought, and depending the Suit, and after the Year and Day is elapsed, one become Accessary to the Murder, the Plaintiff shall have an Appeal against him after the Year and Day past after the Death, but it must be brought within the Year and Day after this new Felony as Accessary.

7. If a Man be Indicted for Murder, and Convicted only of Man-slaughter, and have the Benefit of his Clergy, it seems the Wife and Heir cannot afterwards bring their Appeal. Touching which the Lord *Coke*, *3 Instit.* Fol. 131, cites a Case in these words: Thomas Burghe, *Brother and Heir of* Henry Burghe, *brought an Appeal of Murder against* Thomas Holcroft, *of the Death of the said* Henry: *The Defendant pleaded, that before the Coroner, he was Indicted of Man-slaughter, and before Commissioners of* Over *and* Terminer, *he was upon that Indictment Arraigned, and confessed the Indictment, and prayed his Clergy, and thereupon was entered* Curia advisare vult, *the Court will consider; whereupon he demanded Judgment,*

whether the Plaintiff ought to maintain that Appeal he had brought. To which the Plaintiff demurred in Law. And in this Case three Points were adjudged by Sir Christopher Wray, Sir Thomas Gawdy, and the whole Court.

First, That the Matter of the Bar, had been a good Bar of the Appeal by the Common-Law, as well as if the Clergy had been allowed: For that the Defendant, upon his Confession of the Indictments, had prayed his Clergy, which the Court ought to have granted, and the deferring of the Court to be advised, ought not to prejudice the Party Defendant, albeit the Appeal was commenced before the allowance of it.

The second Point adjudged was, That this Case was out of the Statute of 3 Hen. 7. for that the words of that Act are,

If it fortune, that the same Felons and Murderers, and Accessaries so Arraigned, or any of them, to be Acquitted, or the Principal of the said Felony, or any of them to be Attainted, the Wife or next Heir of him so slain, &c. may have their Appeal of the same Death and Murder against the Person so Acquitted, or against the said Principals so Attainted if they be alive, and that THE BENEFIT OF HIS CLERGY THEREOF be not had

And in this the Defendant Holcroft was neither Acquitted nor Attainted, but Convicted by Confession, and the Benefit of the Clergy only prayed, as is aforesaid, so as the Statute being penal concerning the loss of Men, and made in Restraint of the Common-Law, was not to be taken by Equity, but as Casus Omissus, a Case Omitted, and left to the Common-Law.

As to the Third, it was objected, That every Plea ought to have an apt Conclusion, and that the Conclusion in this Case ought to have been, Et petit judicium si praedict Thomas Holcroft iterum de eadem morte, de qua semel Convictus fuit, Respondere compelli debeat. And he does ask Judgment, if the aforesaid Thomas Holcroft shall be obliged to answer again for the same Death he was once Convicted of: But it was adjudged, that either of both Conclusions was sufficient in Law: And therefore that Exception was disallowed by the Rule of the Court. Note,

Note, The ancient Law was, that when a Man had Judgment to be Hanged in an Appeal of Death, that *the Wife, and all the Blood of the Party slain, should draw the Defendant to Execution.* And *Gasteigne* said, *Issint fuit in diebus nostris*, So it was done in our Days.

And thus much occasionally about *Appeals*, which we the rather inserted, because the Practice thereof (through I know not whose negligence) has been almost lost or forgot, till some few years ago, a Woman in *Southwark* revived it against one that killed her Husband, and got a Pardon for it, but she Prosecuted him on Appeal, had Judgment against him, and he was Executed; since which time the same Course has been frequently talk'd of, and brought, but for the most part (to the Shame, I think, of those Women or Children, who make such Compositions for their Husbands or Fathers Blood) they have been by some secret Bargains or Compensations hush'd up, and seldom effectually followed.

A DIGRESSION touching the Antiquity, Use, and Power of PARLIAMENTS, and the Qualifications of such Gentlemen as are fit to be chosen the Peoples Representatives.

THE Recital of these several Laws for frequent calling of Parliaments, declaring the same to be of such Importance, or Necessity, to the Safety and Well-being of the Nation, invites us to give the vulgar Reader some farther Information touching those most Honourable Assemblies, which, though a Digression, will, I hope, be no Transgression, for I am willing at any time to go a little out of my way, provided I may thereby meet with the Reader's Profit and Advantage.

Of the Name and Antiquity of Parliaments.

THE word PARLIAMENT is *French*, derived from the three words *Parler la ment*, to speak ones mind, because every Member of that Court should sincerely and discreetly speak his mind, for the general Good of the Common-Wealth; and this Name (saith *Coke*, 1 *Inst.* Fol. 110.) was used before *William* the Conqueror, even in the time of *Edward* the Confessor. But most commonly in the *Saxons* time, it was called *Michelgemote* or *Wittenage Mote*, that is, the *Great Mote* [*Meeting* or *Assembly*, whence our *Ward-Motes* in *London* receive their name to this day] or the *Wise Moote*, that is, the Assembly of the wise Men and Sages of the Land.

But this word Parliament is used in a double sense.

1. *Strictly*, as it includes the Legislative Power of *England*, as when we say—*An Act of Parliament:* And in this Acceptation it necessarily includes the King, the Lords, and the Commons, each of which have a *Negative Voice* in making Laws, and without their joynt Consent, no new Laws can pass, that be obligatory to the Subject.

2. *Vulgarly*, the word is used for the *Two Houses*, the Lords and Commons, as when we say, the King will Call a Parliament, His Majesty has Dissolved his Parliament, *&c.*

The Lords of Parliament are divided into two sorts, *viz. Spiritual*, that is to say, the Bishops (who sit there in respect of their *Baronies*) parcel of their Bishopricks, which they hold in their Politick Capacity, and *Temporal*.

The Commons are likewise divided into three Classes or parts, *viz.* Knights or Representatives of the Shires or Counties; where note, that though the Writ require two Knights to be chosen, and that they are called Knights, yet there is no necessity that they should actually have the degree of Knighthood, pro-

vided

vided they be but Gentlemen; for the Statute 23 *Hen.* 6. cap. 15. hath these words, *That the Knights of the Shires, for the* Parliament *hereafter to be chosen, shall be notable Knights of the same* Counties *for which they shall be chosen,* OR OTHERWISE *such Notable Esquires or Gentlemen born of the same* Counties, *as shall be able to be Knights, and no Man to be such Knight, which standeth in the degree of a Yeoman and under.*

Secondly, Citizens chosen to Represent Cities.

Thirdly, Burgesses, that is to say, those that are chosen out of Boroughs.

Note, That the difference between a City and a Borough is this, a City is a Borough Incorporate, which is, or has been within time of Memory an Episcopal See, or had a Bishop; and this (although the Bishopsick be dissolved, as *Westminster* having heretofore a Bishop, though none now) still remains a City. *Coke. 1 Instit.* Sect. 164. Boroughs are Towns Incorporated, but such as never had any Bishops.

Of the Three Estates in Parliament.

THere has been a great Debate about the *Three Estates*, some zealously pleading, That the Bishops are one of the Three Estates of the Realm, and the Lords Temporal a Second, and the Commons-house the Third, and the King over all as a Transcendent by himself: Others as stiffly deny this, and assign the King (as he is the Head of the Common wealth) to be the first Estate; the Lords, as well Spiritual as Temporal joyntly, to be the Second, and the Commons-House the Third.

Non opis est nostræ tantas Componere Lites.

We shall not presume to undertake a Decision of this arduous Controversie, but in our poor Opinion the matter seems to appear more difficult than really it is, by means that the contending Parties do not first plainly set down what it is they severally mean by the word *Estate*. Which may be taken, 1. For a Rank,

Degree, or Condition of Persons considered by themselves, different in some notable Respects from others where with they may be compared. And in this respect, my Lords the Bishops may very properly be said to be an Estate, or one of the Estates of the Realm, for then there will be several Estates, above the number of Three, for so in the House of Commons there may be said to be three Estates, viz. *Knights*, *Citizens* and *Burgesses*. And heretofore, in the days of Popery, when there were 26 Abbots and Priors, that held *per Baroniam* 600, as well as the Bishops, called to the Parliament, and sat in the Lords House, [see *Fuller's Church-History*, Lib. 6. Fol. 191.] Whether they being Religious and Monastical Persons, whereas the Bishops were *Secular* (no small difference in their account) might not as well claim to be a distinct Estate by themselves, as now the Bishops do, may be a question.

But secondly, When we spake of three Estates in the *Constitution* of our English Government, 'tis most natural to mean and intend such a Poize in the Ballance, or such an Order or State, as hath a Negative Voice in the Legislative Power: For as the *King* and *Commons* excluding the *Lords*, so neither the *King* and *Lords* excluding the *Commons*; much less the *Lords* and *Commons* excluding the *King*, can make any Law; but this glorious *Triplicity* must be in mutual *Conjunction*, and then from their united Influences spring our happy Laws. But in this sence the Lords Spiritual by themselves, have no Pretence to be a *Distinct Estate*: That is, they have by themselves no Negative Voice, (which I conceive the proper *Characteristick* or *Essential Mark* of each of the three Estates,) for, suppose a Bill pass the *Commons*, and being brought into the Lords House, all the 26 Bishops should be against it, and some of the Temporal Lords; yet if the other Temporal Lords be more in number than the Bishops, and those that side with them, the Bill shall pass as the Act of the whole House; and if his Majesty please to give it his Royal Assent, is undoubted Law. Which demonstrates

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the Bishops have of themselves no Negative Voice, and consequently are none of the three Estates of the Realm. But if any will have them called an Estate, and mean something else by it, if he please to explain his Notion, 'tis like I shall not contend with him about a fiddle faddle word.

Touching the Power of the Parliament.

THE Jurisdiction of this *Court* (saith *Coke*, 4 *Instit.* Sect. 364.) is so Transcendent, that it Maketh, Inlargeth, Diminisheth, Abrogateth, Repealeth and reviveth Laws, Statutes, Acts and Ordinances, concerning Matters *Ecclesiastical*, *Civil*, *Martial*, *Maritime*, *Capital*, *Criminal* and *Common*. And 4 *Instit.* Fol. 36. The Power and Jurisdiction of the Parliament for making of Laws in proceeding by Bill, is so Transcendent and Absolute, as it cannot be confined either for *Causes* or *Persons* within any bounds. Of this *Court* it is truly said, — *Si Antiquitatem spectes est vetustissima, si Dignitatem, est Honoratissima, si Jurisdictionem, est capacissima*; if you regard its Original, it is most Ancient; if its Dignity, it is most Honourable; if its Jurisdiction, it is most Capacious.

Sir *Thomas Smith*, a great Statesman, and in high esteem and place under Queen *Elizabeth*, in his Treatise, *de Republica Anglorum*, Lib. 2. cap. 2. gives this Character of this supream *Court*—*In Comitiis Parliamentariis, posita est omnis Augusta, absolutaque potestatis vis, potentes leges jubent esse irritas, novas inducunt; præsentibus juncta ac futuris modum constituunt; Jura & possessiones hominum privatorum communant, Spurios natalibus restituunt, cultum divinum sanctionibus corroborant; ponderа & mensuras variant; JUS IN REGNO SUCCEDENDI PRESCRIBUNT*, &c. The most high and absolute power of the Realm of England, consisteth in the Parliament; for the Parliament abrogateth old Laws, maketh new, giveth order for things past, and for things hereafter to be followed, changeth the Rights and Possessions

of

of private Men; Legitimateth Bastards, Corroborates Religion with Civil Sanctions, Alters Weights and Measures; PRESCRIBES THE RIGHT OF SUCCESSION TO THE CROWN; Defines doubtful Rights, where there is no Law already made; Appointeth Subsidies, Taxes and Impositions; giveth most Free Pardons; restoreth in Blood and Name, &c.

As for the Power of Parliaments over both *Statute* and *Common Law*, take it in the Accurate and Significant words of a Parliament, *viz.* the Statute of 25 H. 8. cap. 21. as follows,—*Whereas this Realm Recognizing no Superiour under God, but the King, hath been and is free from Subjection to any Mans Laws, but only to such as have been devised, made, and ordained within this Realm, for the Wealth thereof, or to such other as the people of this Realm have taken at their free Liberty, by their own consent, to be used amongst them, and have bound themselves, by long use and Custom, to the observance of the same; not to the observance of the Laws of any Foreign Prince, Potentate or Prelate, but as to the accustomed and ancient Laws of this Realm, originally established as [illegible] of the same by the said Sufferance, Consents, and Customs, and none otherwise. It standeth therefore with natural [illegible] and good Reason, that all and every such Laws Humane [illegible] within this Realm, or induced into this Realm, by the said Sufferance, Consents and Customs, the King, and the Lords Spiritual and Temporal, and Commons, Representing the whole State of the Realm, in the most High Court of Parliament, have full Power and Authority to dispense with these and all other Humane Laws of the Realm, and with every one of them, as the Quality of the person and matter shall require. And also the said Laws, and every of them, to abrogate, annul, amplifie, or diminish, as to the King, Nobles, and Commons of the Realm, present in Parliament, shall seem most meet and expedient for the Wealth of the Realm.*

Thus far that notable Statute, which in truth is only Declarative, and in Affirmance of the Ancient Common Law of England.

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The particular Business of Parliaments.

BY what hath been said, you may perceive the Work of an English Parliament, is not (as some would have it) only to be Keys to unlock the Peoples Purses. That is but one part, and perhaps one of the least parts too, of their Office. They are to propose new Laws that are wanting for general Good, and to press the Abrogation of Laws in being, when the Execution of them is found Prejudicial or Dangerous to the Publick. They are to provide for Religion, and the Safety and Honour of the Nation, they have a Power (as you have heard from Sir *Thomas Smith*) to order the Right to the Crown (understand all this with the King's consent) and they have very frequently undertaken and actually limited the same contrary to and different from, *the Common Line of Succession*. Nay by the Statute of 13 *Eliz.* cap. 1. it is expressly Enacted, *That if any person shall, in any wise, hold and affirm, or maintain, that the Queen, with and by the Parliament of* England, *is not able to make Laws and Statutes of sufficient Force and Validity, to Limit and Bind the Crown of this Realm, and the Descent, Limitation, Inheritance and Government thereof; or that this present Statute, or any part thereof, or any other Statute to be made by the Authority of the* Parliament *of* England, *with the Royal Assent for Limiting the Crown, is not, are not, or shall not, or ought not to be for ever of good and sufficient Force and Validity to Bind, Limit, Restrain and Govern all persons, their Rights and Titles, that in any wise may or might claim any Interest or Possibility in or to the Crown of* England, *in Possession, Remainder, Inheritance, Succession or otherwise howsoever, and all other Persons whatsoever, every Person so holding, affirming or maintaining, during the Life of the Queen shall be adjudged a High Traytor, and suffer, and forfeit, as in Cases of High Treason is accustomed, and every Person so holding, affirming or maintaining, after the Decease of our said Sovereign Lady, shall forfeit all his Goods and Chattels.*

Which

Which *Clause*, and last mentioned Penalty, is to this day in force, and ought to be considered by any who shall now pretend, that an Act of Parliament cannot dispose of the Succession.

As for the Right of making War and Peace, the same is granted to be part of the High Prerogatives of our Kings, yet the wisest of our Monarchs have very rarely entred into any War without the consent of Parliament. For 1. Who could give them better *Counsel* in such a difficult Affair? 2. The People would more readily expose their Persons in such a War, the Justice and Expediency wherein was approved by their Representatives. 3. The King, from thence, might more certainly promise himself Supplies of Money to carry on the same.

But nothing is more properly the Work of a Parliament, than to redress Grievances; to take notice of Monopolies and Oppressions; to curb the Exorbitances of pernicious Favourites, and ill Ministers of State; to punish such mighty Delinquents as look upon themselves too big for the ordinary reach of Justice; to inspect the *Conduct* of such as are intrusted with Administration of the Laws, or disposal of the publick Treasure of the Nation: All *Crimes* of these and the like kinds, are publick Nuisances, common Mischiefs, and wound the whole Body Politick in a vital part, and can scarce at all be found out or redressed (by reason of the Power and Influence of the Offenders) but in this great and awful Senate, before whom the haughtiest *Criminals* tremble; and it has been observed, that they scarce ever Prosecuted any (though never so great, or highly in Favour at *Court*) but sooner or later they hit him, and it proved his Ruin. Take a few Examples. King *Edward* the Second dotes upon *Piers Gaveston* (a French Gentleman) he wastes the King's Treasures, has undeserv'd Honours conferred on him, affronts the ancient Nobility. The Parliament in the beginning of the King's Reign complains of him, he is banish'd into *Ireland*. The King afterwards

afterwards calls him home, and Marries him to the Earl of *Gloucester*'s Sister, the Lords complain against it effectually, that the King not only consents to his second Banishment, but that if ever he returned, or were found in the Kingdom, he should be held and proceeded against as an Enemy to the State. Yet back he comes, and is received once more by the King as an Angel, who carries him with him into the North, and hearing the Lords were in Arms to bring the said *Gaveston* to Justice, plants him for safety in *Scarborough Castle*, which being taken, his Head was chop'd off.

In King *Richard* the Second's time most of the Judges of *England*, to gratifie certain corrupt and pernicious Favourites about the King, being sent for to *Nottingham*, were, by Perswasions and Menaces, prevailed with to give false and illegal Resolutions to certain Questions proposed by them, declaring certain Matters to be Treason, which in truth were not so; for which, in the next Parliament, they were called to account, and Attainted; and Sir *Robert Tresilian* Lord Chief Justice of *England*, was drawn from the Tower through *London* to *Tyburn*, and there Hanged: As likewise was *Blake* one of the *King's Council*, and *Uske* the under Sheriff of *Middlesex*, who was to pack a Jury to serve the present *Turn*, against certain innocent Lords, and others, whom they intended to have had taken off; and five more of the Judges were Banish'd, and their Lands and Goods forfeited. And the Archbishop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk*, three of the King's *Evil Counsellors*, were forced to fly, and died miserable Fugitives in Foreign Parts.

In the beginning of King *Henry* the Eighth's Reign, Sir *Richard Empson* Kt. *Edmund Dudley* one of the Barons of the Exchequer, having, by colour of an Act of Parliament to try People for several Offences without Juries, committed great Oppressions, were proceeded against in Parliament, and lost their Heads.

In the nineteenth Year of the Reign of King *James*, an Act of Parliament holden at *Westminster*, there were shewn (saith

(saith *Baker's Chron.* Fol. 418.) two great Examples of Justice; which, for future Terror, are not unfit to be here related; one upon Sir *Giles Mompesson*, a Gentleman otherwise of good Parts; but for practising sundry Abuses, in erecting and setting up new Inns and Ale-houses, and exacting great Sums of Money of People, by pretence of Letters Patents granted to him for that purpose, was sentenced to be degraded from his Knighthood, and disabled to bear any Office in the *Common-wealth*, though he avoided the Execution by Flying the Land: But upon Sir *Francis Mitchel*, a Justice of the Peace of *Middlesex*, and one of the chief Agents, the Sentence of Degradation was Executed, and he made to ride with his Face to the Horse-tail through the *City* of *London*. The other Example was of Sir *Francis Bacon*, Viscount St. *Albans*, Lord Chancellor of *England*, who for Bribery was put from his place, and committed to the Tower.

In King *Charles* the First's time, most of the Judges that had given their Opinions contrary to Law in the case of *Ship-Money*, were call'd to account, and forced to Fly for the same. And in the nineteenth Year of King *Charles* the Second, the Earl of *Clarendon*, Lord Chancellor of *England*, being questioned in Parliament, and retiring thereupon beyond the Seas, was by a special Act Banished and Disabled. In a word, it was well and wisely said of that excellent Statesman, Sir *William Cecil*, Lord *Burleigh*, and High Treasurer of *England*, *That he knew not what an* Act of Parliament *might not do*; which Apothegm was approved by King *James*, and alledged (as I remember) in one of his published Speeches.

And as the Jurisdiction of this *Court* is so transcendent, so the Rules and Methods of Proceedings there, are different from those of other *Courts*. For (saith *Coke*, 4 *Inst.* Fol. 15.) *As every Court of Justice hath Laws and Customs for its Direction; some by the Common Law, some by the Civil and Canon Law, some by particular Laws and Customs, &c. So the High Court of Parliament,*

Sum-

Suis propriis Legibus & Consuetudinibus Subsistit. *Subsists by its own peculiar Laws and Customs: It is,* Lex & Consuetudo Parliamenti, *the Law and Custom of* Parliament, *that all weighty Matters in any* Parliament moved *concerning the* Peers, *and Commons in* Parliament *assembled, ought to be determined, adjudged and discussed by the Course of the* Parliament, *and not by the Civil Law, nor yet by the Common Laws of this Realm used in inferior Courts. Which was so declared to be,* Secundum Legem & Consuetudinem Parliamenti, *according to the Law and Custom of* Parliament, *concerning the Peers of the Realm, by the King, and all the Lords Spiritual and Temporal; and the like,* pari Ratione *(for the same Reason) is for the Commons, for any thing moved or done in the House of Commons: And the rather, for that by another Law and Custom of* Parliament, the King cannot take notice of any thing said or done in the *House of Commons,* but by the Report of the *House of Commons: And every Member of the* Parliament *hath a Judicial place, and can be no Witness. And this is the Reason that Judges ought not to give any Opinion of a Matter of* Parliament, *because it is not to be decided by the Common Law,* but Secundum Legem & Consuetudinem Parliamenti, *according to the Law and Custom of* Parliament: *And so the Judges in diverse* Parliaments *have confessed. And some hold, that every Offence committed in any Court punishable by that Court, should be punished (proceeding Criminally) in the same Court, or in some higher, and not any Inferior Court, and the Court of* Parliament *hath no higher.* — Thus *Coke.*

In the Reign of King *Charles* the Second, great *Complaints* was made, about the *House of Commons* sending for some Persons into *Custody* by their Serjeant at Arms; but certainly they did no more therein, than what their Predecessors have often done; every *Court* must be supposed armed with a Power to defend it self from *Affronts and Insolencies:* In all Ages, when the House has appointed particular *Committees,* hath it not been usual to order, that they shall be impowered to send for *Papers, Persons,* and *Records?* But to bring

bring Men to a sober Consideration of their Duty and Danger, I shall give a few Instances, besides those before mentioned, of what the House of Commons hath done in former Ages.

1. *Anno* 20 *Jacobi*, Dr. *Harris*, Minister of *Blechingly* in *Surry*, for mis-behaving himself by Preaching and otherwise, about Election of Members of Parliament upon complaint, was called to the Bar of the House of Commons, and there, as a Delinquent on his Knees, had Judgment to confess his Fault there, and in the Country, in the Pulpit of his Parish-Church, on Sunday before Sermon.

2. *Anno* 21 *Jacobi*, *Ingrey* under Sheriff of *Cambridgeshire*, for refusing the Poll, upon the Promise of Sir *Thomas Steward* to defend him therein, kneeling at the Bar, received his Judgment to stand committed to the Serjeant at Arms, and to make Submission at the Bar, and acknowledge his Offence there, and to make a farther Submission openly at the Quarter-Sessions, and there also to acknowledge his Fault.

3. *Anno* 20 *Jacobi*, the Major of *Arundel*, for mis-behaving himself in an Election, by putting the Town to a great deal of Charge, not giving a due and general Warning, but Packing a number of Electors, was sent for by Warrant, and after ordered to pay all the Charge, and the House appointed certain Persons to adjust the Charges.

4. And 3 *Car.* 1. Sir *William Wray*, and others, Deputy Lieutenants of *Cornwall*, for assuming to themselves a Power to make whom they Bleas'd Knights, and defaming those Gentlemen that then stood to be chosen, sending up and down the Country, Letters for the Trained Bands to appear at the Day of Election, and Menacing the Country, under the Title of *His Majesty's Pleasure*; had Judgment given upon them, to be committed to the Tower. 2. To make Recognition of their Offence at the Bar of the House upon their Knees, which was done. 3. To make a Recognition and Submission at the Assizes in *Cornwall*, in a Form drawn by a *Committee*.

5. But

1. But most remarkable are the Proceedings in the same Parliament, *Anno* 1628. against Dr. *Manwaring*, who being there charged with Preaching and Publishing Offensive Sermons, and the same referred to a Committee; they brought in their Report, which was delivered to the House with this Speech, as I find it in Dr. *Fuller's Church-History*, Lib. 11. Fol. 129.

Mr. Speaker,

I am to deliver from the Sub-Committee, a Charge against Mr. Manwaring, *a Preacher and Doctor of Divinity, but a Man so Criminous, that he hath turned his Titles into Accusations; for the Better they are, the Worse is he, that hath dishonoured them. Here is a great Charge that lies upon him, it is great in it self, and great because it hath many great Charges in it:* Serpens qui Serpentem Devorat, fit Draco; *his Charge having digested many Charges into it, it becomes a Monster of Charges. The main and great one is this,* a Plot and Policy, *to alter and subvert the Frame and Fabrick of this State and Common-wealth. This is the great one, and it hath others in it that gains it more Greatness: For to this end, he labours to infuse into the Conscience of His Majesty, the Persuasion of a Power not bounding it self with Laws, which King* James *of famous Memory, calls in his Speech in Parliament, 1619.* Tyranny, *yea,* Tyranny accompanied with Perjury.

2. *He endeavours to persuade the Consciences of the Subjects, That they are bound to obey Illegal Commands; yea, he Damns them for not Obeying them.*

3. *He Robs the Subjects of the Property of their Goods.*

4. *He Brands them that will not lose this* Property, *with most Scandalous and Odious Titles, to make them Hateful both to* Prince *and* People, *so to set a Division between the Head and Members, and between the Members themselves.*

5. *To the same end (not much unlike to* Faux *and his Fellows) he seeks to Blow up* Parliaments *and* Parliamentary Power. *These five being duly viewed, will appear to be so many Charges, and withal they make up the main and great Charge, a Mischievous Plot to Alter and Subvert the*

Frame

Frame and Government of this State and Common-wealth. And now that you may be sure that Mr. Manwaring, *though he leave us no* Propriety *in our Goods, yet he hath an absolute Propriety in his Charge*; Audite ipsam Belluam, *hear Mr.* Manwaring *by his own words, making up his own Charge.*

Here he produced the Books, particularly insisting on p. 19, 29 and 30. in the first Sermon, p. 35, 36 and 48. in the second Sermon; all which passages he heightened with much Eloquence and Acrimony, thus concluding his Speech, *I have shewed you an Evil Tree that bringeth forth Evil Fruit; and now it rests with you to determine, whether the following Sentence shall follow*, Cut it down, and cast it into the Fire.

Four days after the Parliament proceeded to his Censure, consisting of eight Particulars, it being ordered by the House of Lords against him, as followeth.

1. To be Imprisoned during the Pleasure of the House.

2. To be Fined a thousand Pounds.

3. To make his Submission at the Bar in this House, and in the *House of Commons*, at the Bar there, *in Verbis Conceptis*, a set Form of words framed by a *Committee* of this House.

4. To be Suspended from his Ministerial Function three Years, and in the mean time a sufficient Preaching-man to be provided out of the Profits of his Living, and this to be left to be performed by the *Ecclesiastical Court*.

5. To be Disabled for ever hereafter from Preaching at *Court*.

6. To be for ever Disabled of having any Ecclesiastical Dignity in the Church of *England*.

7. To be Uncapable of any Secular Office or Preferment.

8. That his Books are worthy to be Burned, and His Majesty to be moved, that it may be so in *London*, and both the *Universities*.

And

And accordingly he made his humble Submiſſion at both the Bars in Parliament, on the Three and twentieth of *June* following, and on his Knees, before both Houſes, ſubmitting himſelf, with outward Expreſſions of Sorrow, as followeth,

I do here, in all Sorrow of Heart, and true Repentance, acknowledge thoſe many Errors and Indiſcretions which I have committed in Pre chinz and Publiſhing the two Sermons of mine, which I called Religion and Allegiance, and my great fault in falling upon this Theam again, and handling the ſame raſhly, ſcandalouſly and unadviſedly, in my own Pariſh Church in St. Giles's in the Fields, the Fourth of May laſt paſt. I humbly acknowledge theſe three Sermons to have been full of Dangerous paſſages and Inferences, and ſcandalous Aſſertions, in moſt part of them. And I do humbly acknowledge the juſt proceedings of this Honourable Houſe againſt me, and the juſt Sentence and Judgment paſſed upon me for my great Offence. And I do, from the bottom of my Heart, crave Pardon of God, the King, and this Honourable Houſe, and the Common-weal in general, and thoſe worthy Perſons adjudged to be reflected upon by me in particular, for theſe great Offences and Errors.

The Truth is, 'tis the High Court of Parliament, that only can hinder the Subject from being given up as a Prey to the Arbitrary Pleaſure, not only of the Prince, if he ſhould attempt it, but (which is ten time worſe) to the unreaſonable Paſſions and Luſts of Favourites, chief Miniſters, and Women; when otherwiſe inſtead of a Monarch (who as ſometimes it may happen ſhall Govern but in name) we might be ruled like the Ancient *French*, by an inſolent *Major of the Palace*, who will be ſure to mind the private Intereſt of himſelf and Family more than that of the Prince or the Publick Good: Or like the Turkiſh Empire under a Weak Grand Seignior, by the Prevailing Concubine of the Seraglio, who is perhaps her ſelf managed by no other Dictates, than that of her chief Eunuch, or She-Slave. It is ſtrange therefore to obſerve the Impotent Ambition of ſome Men, (and ſuch as with Shame

Shame let us speak it, shall themselves *English-men* too) who (provided they may trample upon and Domineer over their Inferiors) care not how much their Superiors do the like over them. Their Souls (like most insolent Mens) being mean enough to submit thereunto; or, who can enough deplore and abhor the Ignorance and Stupidity of some lazy insignificant Gentlemen, who care not how things go, provided they may enjoy their Hawks, Hounds, and Bowling-Green Meetings; whilst not only for Divinity, but Politicks too, they are Govern'd by their more impertinent Chaplain, or the Parson of their Parish. Now nothing is more Obvious, than the Designs of some Idle, Covetous, Sycophant Clergy-men, who, like Ivy, tho' it cannot grow without the support of the Oak, and yet will destroy it at last, do in private Parlours over the Glass, whilst Healths go round, as well as in their Pulpits over their Cushions, set up Absolute Monarchy to be *Jure Divino*, declaiming against the unreasonable Stubbornness of any Parliament that will not give away the Peoples Money, and submit themselves to be Fleec'd, as often as the prime Minister or Favourite think fit, they cry up the Prince like an Angel, so long as he will be their Executioner, to Whip, Imprison, or Hang, all that will not truckle to their own Pride and Avarice; or refuse to give up their Souls once again to be managed by an Implicit Faith, whereby in the mean while these *English Jacks* might not be troubled with those unease Talks of *Studying, Preaching*, &c. but may have nothing else to do, but live at ease, keep their Coach and Horses, with a filly Curate to do all the Drudgery; whilst they themselves are making Addresses above, by flattering and informing at some great Nobleman's or Bishop's Table, and railing against the Whiggs and Fanaticks, and speaking a good word for Popery by the By. Or else, if their Parts reach so high, by some Solemn Pamphlet, or Sermon against the Government Establish'd by Law, they teach, that Men have

no

no Property either in their Lives or Goods, but only during the Prince's Pleasure, &c. If there be not such a parcel of Things as these that call themselves Divines, then no Body is concerned in this Character; but if there be, they are the worst of Men, and ought not only to be exposed, but severely punished.

Therefore since at present we live under so happy a Government, where being securely landed our selves, we behold the Shipwrack of our Neighbours, it is therefore the Indispensable Interest and Duty of all true English-men, to maintain these Priviledges, conveyed from their Ancestors, through so many Generations, inviolable, upon which all our (Earthly) and in a great measure our Spiritual) Happiness, Safety, and Well-being depends. Nor can any Man in his Senses but acknowledge, that the only right way to attain that end, is to look well to the Means, and that is, by taking due care what Persons they chuse for their Representatives, with whom they must trust their Estates, Lives, and Liberties.

Now this Government of a Prince, by and with Parliaments, whenever the Condition and Necessities of the State require them, however according to its Primitive Institution, it was the best of all others, yet as well in that, as in Christianity it self, there have been found out ways of Corruption, and that is, when either they sit too long, or too seldom, or are too frequently dissolved; too frequent Dissolutions being no less Dangerous to the Subject, than too long Sessions. Nevertheless it may be in the Electors power to avoid the Inconveniencies of both, and that is by making a good Choice.

Whereas if the Country People will sell all that they have for a little Roast Beef, a Glass of Sack, and a Pot of Ale, chooding him that will give them most Drink to day, though they know him to be a Person, who will sell both their Religion, Liberties and Fortunes to-morrow, then frequent Dissolutions will of necessity ruin us, and utterly debauch this Excellent

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Constitution; for the honest Country-Gentleman, designing no other private Advantage, but the true Service of the King and his Country, hath no reason, nor is he able, once in half a Year, to spend 4 or 500 *l.* only to purchase a place full of Labour, Charge, Trouble and Danger, without any Profit to himself, only to serve those who put him to such an unkind Expence. And when Honest Loyal Gentlemen are thus discouraged, if this Scottish Humour amongst the Electors continue, the Papists, and their Faction, or necessitous Persons of prostituted Consciences, will carry their Votes; for they can afford to buy them at large Rates, being resolved to repay themselves, though with the Ruin of the Nation.

This is no vain Surmise, or idle Speculation, but the very Truth of the Case; and the meanest Countryman that has Eyes in his Head, and will use them, cannot but see it: For did you ever know a Coach-man, or Groom, buy his place, unless he designed to rob his Master's Bin? Therefore whoever you put to charge in your Elections, blame him not, if he makes Money again of what he bought, and lays out his Vote in the House, not for your Good, and that of the Publick, but that way as will best please the Ministers of State, that so he himself may get a good Place, or Preferment, or Title of Honour by the Bargain. I say, though he himself be a base Wretch for so doing, yet You cannot blame him, since you did not lend him your Trust, but sold it him; and what a Man hath purchased with his own Money, he may lawfully sell again.

Therefore that Man who does wilfully give his Vote for one Disaffected, does his endeavour to ruin both his Country, and himself, and his Posterity, and to be as bad, or worse, than the Person he chooses; and if the greater part of the House happen to be Wise or Honester, it is no Thanks to him; he did as much as he could to debauch it; and therefore for his part, if none else were concerned with him, it were no matter if he were forthwith made a *Slave*, and his Children *Perpetual Vassals*.

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The before-mentioned old Lord Treasurer *Burleigh*, (who is thought to have been the greatest Statesman that ever this Nation bred) did frequently deliver as a Maxim, or rather as a Prophecy, *That England can hardly be ruined, unless it be by her own Parliament*; undoubtedly foreseeing that other Oppressions, as being wrought by Violence, might perhaps by Violence be in time shaken off again; whereas, when in a Parliamentary way we are undone by a Law that can never be reversed, but by a down-right Rebellion, because the Parties advantaged by that Law, will never agree to the repealing of it; and a Rebellion is both so dangerous, and of so black a Character, as Men either Rich or Conscientious, will not engage therein; and therefore no publick Mischief is so irrecoverable, as that which is grown into a Law; and nothing, you know, can become so, but what is Imposed upon you by Parliament. Such is the happy Frame of your Government, so prudently and so strongly have your Ancestors secured Property and Liberty, (rescued by inches out of the hands of incroaching Violence) that you cannot be enslaved, but with Chains of your own making; for as you are never undone, till you are undone by Law; so you can never be undone by a Law, till you chuse the undoing Legislators; and may not your Enemies add *Scorn* to their *Cruelty*, and pretend Justice for both, when they can plead they had never trampled on your Heads, had not you laid them on the Ground?

From what has been said, it evidently appears, of what vast Importance it is at all times, whenever His Majesty shall be pleas'd to Issue out his Writs for a Parliament, to chuse (as much as in us lies) a good House of Commons, as we tender our Religion, Liberties, Estates and Posterity; upon our well or ill chusing, depends our well or ill being; 'tis here as in Marriage or War, there is no room for second Errors, one Act may ruin a Nation beyond retrieve.

Besides, they whom you chuse, will represent the Qualities as well as the Persons, and if you send up a false Glass, it will represent you with an ugly Face; you have hitherto had the repute of an ancient and grave People, but if you chuse raw Saplings, green Heads, unexperienced Children, the World will judge of you, as they once did of the *Grecians*, that you were either always Children, or are grown twice so; you have long been a famous Religious Protestant Nation, but if you chuse debauched swearing Atheists, Men of no Religion, or such as are meer Formalists, or inclinable to Popery, what can the World think, but that the Nation has lost its sense of Religion, and is content to be led back into the Egyptian Darkness of Romish Fopperies? You have formerly had the Character of a sober temperate Nation, but if you chuse Drunkards for your Trustees, or give your Voices for those that gorge you most with Liquor: What can be supposed, but that you are already Drunk with Folly, and just Reeling into Slavery?

Some Directions concerning the Choice of Members to serve in Parliament, and the Qualifications that render a Gentleman Fit or Unfit, Worthy or Undeserving of your Voices for so great a Trust.

1. AVoid all such as hold any Office of considerable Value during Pleasure, they being subject to be Over-awed. For although a Man wish well to his Country, and in the Betraying thereof, knows that at the long run he Mischiefs and Inslaves his Posterity, if not himself, yet the narrowness of Mens Minds is such, as makes them more tenderly apprehend a small present Damage, than a far greater hereafter. Such Men must of necessity be under a great Temptation and Distraction, when their Consciences and Interest look different ways. For to say truth, such an Office

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is but a softer word for a *Pension*: Therefore since these Men know before-hand, the Inconveniencies that attend the Trust of a Member of Parliament faithfully discharged, 'tis very suspicious and reflecting upon their Honesty, if any such stand for it: And I think we are bound in Charity, nor can we do them a greater Courtesie, than to answer their Petition in the Lord's Prayer——*Not to lead them into Temptation.*

2. Suspect all those (especially if they are Men of ill Repute) who in their Profession, or near Relations, have Dependency upon the Court. For, though to be the King's Servant is no Bar from being a Parliament-Man, or from serving his Country honestly in that Station, and no doubt several of them have, at divers times, well discharged the same; yet frequently such Persons, (unworthily) guessing at their Prince by themselves, are apt to Vote right or wrong, as they imagine will most please the Prerogative Party; and 'tis an hard matter for a Courtier to please that great (Statesman and) Minister who supports him, and those whom he Represents, at the same time: And if he endeavours to oblige both, he becomes such an uncertain Weathercock, as most commonly he pleases neither. And therefore the most prudent and honestest of the Courtiers, are always observed to decline being Parliament-men, for this very reason.

3. Meddle not with such as have been, or are like to prove Pentioners, or receive Sallaries for secret Services. I know they would, some time since, Brazen it out, That there were no such Men, no such Practices. But the contrary is notorious; did not the House of Commons once take the thing into Examination? Nay; Did not Sir *E. F.* by his Memory (without the Books, which for some reasons were refused to be brought in) name about Thirty of them, and the respective Sums yearly paid to each? And would not many more have been discovered, and the whole Knot of them severely and exemplarily punish'd, if that Parliament

had a little longer continued? Now there is none more implacably your Enemy than that Person whose Interest it is to destroy you; that must neither eat nor drink, except you starve; that must go in Rags, except you go naked; are taught to Fleece you, that they may keep themselves Warm. To prevent this, avoid not only all former Pensioners, but such other as may be in danger to become so; Therefore meddle not with Men of necessitous Fortunes, or much in Debt. The Representatives of a Nation, ought to consist of the most Wise, Wealthy, Sober, and Couragious of the People, not Men of mean Spirits, and little Figure, and sordid Passions, that would sell the Interest of the People that chose them, to advance their own; or be at the beck of some great Men, in hopes of a lift to a good Imploy. Those that have fair Estates, have in a manner given Hostages to their Country, and must be Errant Fools, before they can play the Knave with you. But what cares the Needy Passenger if the Ship perish, if he can but save himself in the Long-Boat, or get some Booty by the Wreck? What Protection do you expect from them, who cannot shew their Faces with confidence without a Protection, either in or out of Parliament? Who are no less apprehensive of a Bayliff, than of the once growing Greatness of the *French*; and dread not *Popery* half so much as an *Out-Lawry*? Will you secure them within the Walls of the House of Commons, who were better secured within the Walls of a common Goal? Who can never pay their Debts contracted by their Prodigality, but out of your Purses; and must run you in, to get themselves out of their Mortgages? These Mens fear of being Dissolved, makes them submit to any thing, rather than be left to the unmerciful Rage of their hungry Creditors, who have so long fasted for their Money. For all such Persons (though some of them may be look'd upon as honest fair conditioned Gentlemen, and good House-keepers) are in danger of being tempted to repair the Decays

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of their own private Fortunes, but the Ruin of the Publick. Moreover, the chusing of such broken Fortunes, decays Trade, and ruins whole Families; insomuch that I have known it drive many Men (contrary to their own Inclinations) to wish never to see Parliaments more in *England*. In a word, If Beggars ever come to be your Representatives, how can they judge what is expedient for the Nation to spare, whose only Care is, to get a piece of Money to spend?

4. As you are not unadvisedly to chuse such as retain to the Court at home, so much less are you to elect any such as have their Dependance upon Foreign Princes or States, these are under strong Obligations to see you ruined; for your own Reason will tell you, that no Foreign Power will prodigally throw away his Pistols, where he expects not an Harvest answerable to his Seed. 'Tis possible this Caution may not be unnecessary, for 'tis more than suspected, that there are some such degenerated English-men, who having forsaken the Interest of their Native Country, have sold themselves to an Outlandish Interest, that they may the better gratifie their own Ambition, and those Potent Lusts which their own meaner Fortunes could not otherwise feed or satiate.

5. Be not over-fond to receive Bribes and Gratifications, from Persons that would fain make a Prey of you, and by their Purses, Lavish Treats, and Entertainments, would allure you to prostitute your Voices for their Elections; you may be assured they would never bid so high for your Suffrages, but that they know where to make their Markets. Chuse the worthy unwilling Person, before the complemental unworthy Man, whose extraordinary Forwardness prognosticates he seeks not your Good, but his own, separate from the Publick. Let us not play the Fools or Knaves, to neglect or betray the Common Interest of our Country, by a base Election; let neither Fear, Flattery, nor Gain, Bias us. Consider with your selves, what Losers you will be, if to Laugh and be

Merry one day, the Person you chuse, should give you and your Children occasion to Mourn for ever after. ——Say not, *He's but a single Person, one Man cannot do such Hurt.*——Silly Men! What if all other places should be as bad as your selves? Then all the House would be of a piece; and besides, do not you know, that sometimes a single Man has carried a Vote, which perhaps was no less Mischievous than Irretrievable? Think how justly the gallant ancient Heathens may upbraid this Baseness of us Christians, when as they Sacrificed many of their Children, nay, and oftentimes their own Lives, for the good of their Country: So on the contrary, do we Sacrifice, or at least Hap-hazard, both our Religion, Lives, Children and Country, for the Swinish Pleasure of a day or two's Debanchery.

6. Make not your publick Choice the Recompence of private Favours; 'tis not pleasing a Neighbour, because Rich and Powerful, but saving of *England* that you are to regard. Neither pay nor return private Obligations at the Cost of the Nation. Sir *John* is a pretty Gentleman, and treats People civilly; and my Landlord is a good Man, and has been kind; and Esquire such a one is our next Justice of Peace, but yet I will not give my Voice contrary to my Conscience, or have an hand in a Choice that may ruin my Country, to gratifie any or all of them. Let no such Engagements put you upon dangerous Elections, as you love the Liberties and Freedom of your Posterity; but tell them in this Affair they must hold you excused, for that the weight of the matter will well bear it; this is your Inheritance, all may depend upon it; 'tis a more modest Request, if they would desire you to give them that Freehold and Estate that qualifies you for an Elector, than to press you to be for a Man, that in your Conscience you think unfit, or not so fit as his Competitor, for so weighty a Trust. Men do not use to lend their Wives, or give their Children, to satisfie personal Kindnesses; nor ought you to make a Swop of your Birthright (and that of your

your Poſterities too) for a Meſs of Pottage, a Feaſt, or a luſty Drinking Bout; there can be no Proportion here, and therefore none muſt take it ill, that you uſe your Freedom about that which, in its Conſtitution, is the great Bulwark of all your ancient Liberties.

7. Have a care of Ambitious Men, and Non-Reſidents, ſuch as live moſt about the Town, and not with their Eſtates in the Country. Theſe ſeek Honours and Preferments above; and little or never imbetter the Country with their Expences or Hoſpitality, for they are too much for themſelves, to act vigorouſly for the Advantage of their Country; or if in the Houſe they do for a while Swagger a little, and Speak it briskly, 'tis only that the Court may take notice of them, and take them off by ſome Preferment; and then theſe falſe Patriots ſhall be the only Sticklers for unbounded Prerogative.

8. Be reſolved (againſt all Temptations) to chuſe no Minors: What, will you be content with Sucking Stateſmen? and Beardleſs Politicians? and *Rehoboam's* Counſellors? Then expect, for well you deſerve, to be laſh'd with Scorpions: Can you judge them fit to diſpoſe of your Liberties, Lives, Eſtates and Religion, who cannot legally diſpoſe of their own Eſtates or themſelves? What Security can they give you, that they will not give away Yours and You, whoſe Bond, in the eye of the Law, will not be taken for 40 *s.*? But ſure, your own Experience, of what ſuch young green Perſons have been, and done, in former Parliaments, hath, I hope, learned you ſufficient Wiſdom, not to chuſe the like again.

9. Elect no Prodigal or Voluptuous Perſon, for beſides that, ſuch are not regular enough to be Law-makers, they are commonly idle, and though poſſibly they may wiſh well to your Intereſt, yet they will rather loſe it than their Pleaſures; they will ſcarce leave one of their Nightly Revellings, to give you their attendance and Service next day, and therefore they are not to be relyed upon. And upon this occaſion I ſhall

shall borrow the words of an Author, to whom I do not much desire to be beholden; *Some Senators are drawn from their Duties by Pleasure; perhaps a Party at* Tennis, Bowls, Cards, a Pack of Dogs, a Cock-fight, or a Horse-match, a Comedy, a Good-Fellow, or a Mistress. *And while they are thus employed, the Vigilant Faction steals a Vote that is worth a Kingdom.——Some again are so transported with the Vanity of Dress and Language, that rather than serve the Publick with one Hair amiss, or in one broken Period, they will let the Publick perish,* Mallent Rempublicam turbari, quam capillos. *These, while their Country lies at Stake, are ordering of their Heads, and Polishing the Phrase, shaping the parts of a Set-Speech, till it is too late to use it. Nothing, methinks, does less beseem a Grave Assembly, than this* Facultatula Loquendi; *this same Rhetorical Twittle-twattle, it spins out so much time in tedious Circumstance, that it makes a Man e'en Sick of a good Cause, and for the very Form, prejudge the Reason of it.——Sloth and Neglect, are yet more dangerous in a Senator, in regard of Surprizes from the Faction; these think, a wet Day, or a cold Morning, a sufficient discharge of their Attendance; and while they are taking t'other Nap, or t'other Bottle, the Monarch perhaps has lost his Crown, or the Subject his Liberty.*

9. Avoid all those that play the Protestants in Design, and are indeed disguised Papists, ready to pull off their Mask on the first opportunity, whenever time serves. You may know them by their Swaggering for a Popish Successor to maintain the Protestant Religion; Their Laughing at the Popish Plot, and disgraceing the Evidence of it; and at the same time affirming (without any grounds) the Reality of a Presbyterian Plot; their associating with known Papists, and winking at them; but eager Heats to put the Laws in Execution, with the utmost Rigour, upon Protestant Dissenters: These are Men whose Affection for the Protestant Interest, notwithstanding all their fair Speeches, may justly be question'd, since their Practice gives their Words the Lye. Nor will their

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large Pretenſions, and ſeeming Zeal, for the Church of *England*, at all prevail with wiſe Men; for we know, the Papiſts themſelves, when 'tis for their Intereſt, will pretend the ſame thing, and ſpeak fair of our Church, and rail only upon the Fanaticks; when yet, in their Hearts, they hate our Church, as much as they do any of the Sects: Obſerve all their Pamphlets, the Noiſe is againſt the Presbyterians and Diſſenters, but 'tis with a Deſign to deſtroy them firſt, and the Church of *England* afterwards; for when ſo great a Body of Proteſtants, are preſented as Diſloyal and Dangerous, and cruſh'd and undone, the Church of *England* Men will be left alone, and then they hope to deal with them well enough: And that this is their aim, may be perceiv'd, if you obſerve how Zealous the Papiſts are, to ſtir up Proſecution againſt the Diſſenters; and none more joyful when it goes on, &c. Now what's all this for? Are they, think you, indeed and in earneſt, ſo very kind to the Church of *England*? For what acquaintance? No, no, 'tis all Diſſimulation and Roguery, a Deſign which they drive on, firſt to divide, and then to ruin us. Therefore beware how you chuſe any ſuch Tool, as they make uſe of therein. The contrary, are Men that bleſs God for the moſt happy Diſcovery of the Helliſh Popiſh Plot, and all their wicked Shams ever ſince, and would have the bottom thereof fairly ſearch'd into, and the Traytors, though never ſo great or potent, brought to Condign Puniſhment, and in their Converſation, zealouſly direct themſelves in an Oppoſition to the Papal Intereſt, which indeed is a Combination againſt good Senſe, Reaſon, and Conſcience, and to introduce a blind Obedience without (if not againſt) Conviction: And that Principle, which introduces Implicit Faith, and Blind Obedience, in Religion; will alſo introduce Implicit Faith, and Blind Obedience, in Government: So that it ſhall be no more the Law in the one, than in the other, but the Will and Power of the Superior, that ſhall be the Rule and Bond of our Subjection;

jection; this is that fatal Mischief Popery brings with it to Civil Society, and for which all such Societies ought to beware of it, and its Friends and Abettors, which sure none can be, but such who are design'd for Slaves, by Nature as well as Fortune, debauch'd, lewd, unthinking Animals, properly enough called *Twits*; Silly, Servile, yet Conceited and Cruel Creatures, altogether of an Irish Understanding.

10, As for you Citizens, Burgesses, and Free-men, of Cities and Corporations in particular, I shall only say, *That whoever is not fit to be chosen Knight of the Shire, is likewise unfit to be chosen a Burgess:* Neither let the more specious Pretences of any Man, that shall promise to build you a Town-Hall, or Relieve the Poor with Money, or out of his adjacent Woods, or any such Good-morrows, deceive you; for if so, wherein are you wiser than your Horses, whom you catch every day, and clap a Bridle into their Mouths, only by shewing them a few Oats, which they are never like to eat? Even the very Mice are too wise to be taken by an Old Bait, but will first have the Trap new baited before they'll meddle: And yet I have known a Corporation which has been taken TWICE by the same Bait. But suppose these Men do really perform what they promise, what Compensation is that, if the same Men should lay a good Swinging Tax upon your Estates, without a real cause? Or should give up the very Power you have, of Taxing your selves, or sending your Representatives in Parliament, (for one bad Parliament may ruin us) what good would the Money for your Poor do in such a case, more than, that when you are thereby reduced to Beggery, you might, perhaps, your selves (the Gentry of the Country having no reason to relieve you) be forc'd to come in for a small Share of this their Hypocritical Charity? An excellent Reward for a Knavish Folly. Neither say—*Oh! this is but one Man, and can serve but one Year, he will do our Town a great deal of good, and can do us but little hurt if he would, &c.* For, 1. (as I told

told you before) one or two Voices have, sometimes, carried a Vote of great Importance. 2. You know not what Mischief your bad Example may do in other Corporations; and if all should do so, what a miserable case would you be in, since the Voices of the Boroughs, make two thirds of the House. Lastly, No Man can tell the Influence that one running Talkative ill Man may get over the rest of the House, especially over those that weigh Words more than Sense, or Reason, and the Interest of their Country.

Hitherto we have talked Negatives, and described such as are Not fit to be Chosen; Now we come positively to set before you who are fit for such a Trust in such a dangerous Juncture as, suppose, we may fall into. In order to which, we must consider for what ends they serve, and they are principally Two. The first is, The Preservation of our Religion from Popery; the other is, To preserve inviolable our Liberty and Property, according to the known Laws of the Land, without any giving way unto, or Introduction of, that Absolute and Arbitrary Rule practiced in Foreign Countries, which we are neither to imitate or regard. Therefore,

1. Take care to chuse such as are well known to be Men of good Consciences, fearing God, throughly Principled in the Protestant Religion, and of high Resolution to maintain it with their Lives and Fortunes. And among these, rather call your Favour upon Men of large Principles (I mean in matter of meer Opinion) such as will not Sacrifice their Neighbours Property and Civil Rights, to the Frowardness of their own Party in Religion. Narrow Souls, that will own none but those that bear their own Image and Superscription, will sooner raise *Persecution* at home, than secure us from *Popery* and *Invasion* abroad. *The great Interest of England, at this day, is, to Tolerate those Tolerable, to bear with the Weak, to encourage the Conscientious, and to restrain none, but such as would restrain all besides themselves.*

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2. As we ought, as near as we can possibly judge, to Elect good *Protestants* towards God, and just towards Men, yet since, in this Corrupt Age wherein we live, Men are not so Spiritual as they ought to be, it is not amiss to seek for those, whose Spiritual Interest is seconded by a Temporal one; For though Men talk high, and keep a great Noise with Conscience and Love to their Country, yet when they understand Mankind aright (not as it should be, but as it is, and, I fear, ever will be) then you will find, that private Interest is the String in the Bears Nose, it is that Governs the Beast. And therefore the surest Champions for our Religion (*Ceteris Paribus*) against the Papacy, are our Abby-Landed-Men, for notwithstanding the Registred Dispensation to *King Henry* the Eighth, from the *Pope*, for the seizing of those Monasteries and Lands, yet of late they pretend that the *Pope* had not *Power* to Alien them from the Church; so that the present *Possessors* can never trust nor rely upon that, or any new *Promises*, or Actual Grants thereof, especially from him, whose everlasting and declared Maxim it is—*Never to keep Faith with Hereticks*. Dishonestly, to make safe his ascent into the Saddle, he will proffer many Assurances and Grants, but if these Abby-Landed-Men be not the most Silly of all others, they will never believe him. For when he is once firmly settled, then will he, with his Canon-Law-Distinctions, like Fire under Quick-silver, evaporate away all his *Promises*, and violently Resume the Lands, glorying of his own Bounty, if he require not the mean *Profits*, ever since they have been Sacrilegiously with-held from Holy Church.

3. Endeavour to Chuse Men of Wisdom and Courage, who will not be Hectored out of their Duties by the Frowns and Scowles of Men. Never had you more need to pitch upon the old English Spirit, that durst be Faithful and Just against all Temptations. What a degenerate Race have we known, that could never yet resist Smiles or Frowns, but tamely sunk below their own Convictions, and knew the Evil they did, yet durst not but commit it?

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4. Make it your business to chuse such as are resolved to stand by, and maintain the *Power and Privileges of Parliament* (for they are the Heart-strings of the Common-Wealth) together with the *Power* and just *Rights* of the King, according to the Laws of the Kingdom, so as the one may not intrench upon the other. And such as with a becoming true English Courage, will *Prosecute* all Traytors, whether already Impeached, or to be Impeached; And to secure us from *Popery* hereafter, and to remove all Corrupt and Arbitrary Ministers of State, and wicked Judges, and Stifflers of the Discovery of the *Popish Plot*, and *Subverters*, and vile *Pamphleteers*, that endeavour so industriously to clear the *Papists*, and expose the *Protestant Religion*, and *Poison the People*.

Lastly, Take particular notice of those who are Men of Industry and Improvement; for such as are Ingenious and Laborious, to propagate the Growth and Advantage of their Country, will be very tender of yielding to any thing that may Weaken or Impoverish it.

If you Conduct your selves thus *Prudently*, *Honestly* and *Gallantly* in your Choice, without putting the Gentlemen, whom you chuse to serve you, to Charges, the Consequence will be, that as you will be sure to have a *good Parliament* whenever His Majesty shall please to call one, and such as will be Zealous for the Safety of the *Protestant Religion*, and *Prosperity* of the Nation, if they shall continue to Sit and Act, so, on the other side, If they should be *Dissolv'd*, and never so many new *Parliaments* be called, yet you run no Hazard, for the same Candidates will still be ready to serve you. And so we shall conclude our Discourse of *Parliaments*, when I shall first have observed, that anciently all Free-men of *England* (though not Free-holders) had a Right to chuse their Representatives, till the same was altered and limited by the following Statute, for the Reasons therein mentioned.

The

The Statute Anno 8 Hen. 6. Cap. 7.

What sort of Men shall be Chusers, and who shall be Chosen Knights of the Parliament.

ITem, *Whereas the Elections of Knights of Shires, to come to the Parliaments of our Lord the King, in many Counties of the Realm of England, have now of late been made, by very great, Outrageous and Excessive Numbers of People, dwelling within the same Counties of the Realm of* England, *of the which most part was of People of small Substance, and of no Value, whereof every one of them pretended a Voice Equivalent, as to such Elections to be made, with the most worthy Knights and Esquires, dwelling within the same Counties, whereby Man-slaughter, Riots, Batteries, and Divisions among the Gentlemen, and other People of the same Counties, shall very likely rise and be, unless convenient and due Remedy be provided in this behalf.* (2) *Our Lord the King considering the Premises, hath provided, ordained and established, by Authority of this present Parliament, that the Knights of the Shires, to be chosen within the said Realm of* England, *to come to the Parliament of our Lord the King hereafter to be holden, shall be chosen in every County of the Realm of* England, *by People dwelling and resident in the same Counties, whereof every one of them shall have Land or Tenement, to the Value of Forty Shillings by the Year, at the least, above all Charges.* (3) *And that they which shall be so chosen, shall be dwelling and resident within the same Counties.* (4) *And such as have the greatest number of them, that may extend Forty Shillings by the Year and above, as afore is said, shall be returned by the Sheriffs of every County, Knights for Parliament, by Indentures sealed between the said Sheriffs, and the said Chusers, so to be made.* (5) *And every Sheriff of the Realm of* England, *shall have Power, by the said Authority, to examine, upon the Evangelists, every such Chuser, how much he may expend by the Year.* (6) *And if any Sheriff returned Knights to come to the Parliament, contrary,*

to the said Ordinance, the Justices of Assises, in their Sessions of Assises, shall have Power, by the Authority aforesaid, therefore to inquire. (7) And if, by inquest, the same be found before the Justices, and the Sheriff thereof be duly attainted, that then the said Sheriff shall incur the Pain of an Hundred Pounds, to be paid to our Lord the King, and also that he have Imprisonment by a Year, without being let to Mainprise or Bail. (8) And that the Knights for the Parliament, returned contrary to the said Ordinance, shall lose their Wages.

Provided always, that he which cannot expend Forty Shillings by Year, as aforesaid, shall in no wise be Chosen of the Knights for the Parliament. (9) *And also in every Writ, that shall hereafter go forth to the Sheriffs, to chuse Knights for the Parliament, mention be made of the said Ordinance.*

NOTE.

Though this Statute make the Penalty on a Sheriff but 100 *l.* for a false Return, yet the House may further punish him by Imprisonment, &c. at their pleasure, by the Law and Custom of Parliaments.

We shall now proceed to certain excellent Laws of a latter Date, made for the Explanation and Conservation of our Liberties; and in the first place present you with that excellent Petition of Right, granted by King *Charles* the First.

Anno Regni Caroli Regis Tertio.

The PETITION exhibited to His Majesty, by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning diverse Rights and Liberties of the Subjects.

To the King's Most Excellent Majesty.

HUmbly shew unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons, in Parliament

liament assembled, That whereas it is declared and enacted by a Statute made in the time of the Reign of King Edward *the First, commonly called* Statutum de Tallagio non Concedendo, *that no Tallage or Aid shall be laid or Levied by the King, or his Heirs, in this Realm, without the good Will and Assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other the Freemen of the Commonalty of this Realm.* (2) *And by Authority of Parliament, holden in the five and twentieth Year of the Reign of King* Edward *the Third, it is declared and Enacted, That from thenceforth, no Person shall be compelled to make any Loans to the King, against his Will, because such Loans were against Reason, and the Franchise of the Land.* (3) *And by other Laws of the Realm it is provided, That none should be Charged, by any Charges or Imposition called a* Benevolence, *nor by such like Charge.* (4) *By which the Statute before mentioned, and other the good Laws and Statutes of this Realm, your Subjects have inherited this Freedom, that they should not be compelled to contribute to any Tax, Tallage, Aid, or other like Charge, not set by common Consent in Parliament.*

2. *Yet nevertheless of late, divers Commissions directed to sundry Commissioners in several Counties, with Instructions, have issued, by means whereof your People have been in divers places Assembled, and required to lend certain Sums of Money unto your Majesty; and many of them, upon their refusal so to do, have had an Oath administred unto them, not warrantable by the Laws or Statutes of this Realm, and have been constrained to become bound to make Appearance and Attendance before your Privy Council, and in other places; and others of them have been therefore Imprisoned, Confined, and sundry other ways molested and disquieted.* (2) *And divers other Charges have been laid and levied upon your People, in several Counties, by Lord Lieutenants, and Deputy Lieutenants, Commissioners for Musters, Justices of Peace, and others, by Command or Direction, from your Majesty or your Privy Council, against the Laws and Free Customs of this Realm.*

3. *And where also by the Statute, called the* Great Charter *of the Liberties of England, it is declared, and Enacted, That*

That no Freeman may be taken or Imprisoned, or be Disseised of his Freehold or Liberties, or of his free Customs, or be Outlawed or Exiled, nor in any manner Destroyed, but by the lawful Judgment of his Peers, or by the Law of the Land.

4. And in the eight and Twentieth Year of the Reign of King Edward the Third, it was Declared and Enacted by Authority of Parliament That no Man, of what Estate or Condition that he be, should be put out of his Lands or Tenements, nor taken nor Imprisoned, nor Disinherited, nor put to Death, without being brought to Answer, by due Process of Law.

5. Nevertheless, against the Tenor of the said Statutes, and other the good Laws and Statutes of your Realm, to that end provided, diverse of your Subjects of late, have been Imprisoned without any Cause shewed; (2) And when for their Deliverance they were brought before Justices by your Majesty's Writs of Habeas Corpus, there to undergo and receive as the Court should Order, and their Keepers commanded to certify the Causes of their Detainour, no cause was certified, but that they were detained by your Majesty's Special Command, signified by the Lords of your Privy Council, and yet were returned back to several Prisons without being charged with any thing, to which they might make Answer according to the Law.

6. Whereas of late, great Companies of Soldiers and Mariners have been dispersed into divers Counties of the Realm, and the Inhabitants against their Wills, have been compell'd to receive them into their Houses, and there to suffer them to Sojourn against the Laws and Customs of this Realm, and to the great Grievance and Vexation of the People.

7. And whereas also by Authority of Parliament, and in the Five and Twentieth Year of the Reign of King Edward the Third, it is Declared and Enacted, That no man shall be prejudged of Life and Limb against the Form of the Great Charter and Law of the Land; (2) And by the said great Charter, and other the Laws and Statutes of this your Realm, no man ought to be Judged to Death, but by the Laws established in this your Realm, either by the Customs of the Realm, or by Acts of Parliament: (3) And whereas no Offender of what kind soever, is exempted from the Proceedings to be used, and Punishments to be inflicted by the Laws and Statutes of

this your Realm; nevertheless, of late diverse Commissions under Your Majesty's Great Seal have issued forth, by which certain Persons have been assigned and appointed Commissioners, with Power and Authority to proceed within the Land, according to the Justice of Martial Law, against such Soldiers and Mariners, or other dissolute Persons joining with them, as should commit any Murder, Robbery, Felony, Mutiny, or other Outrage or Misdemeanour whatsoever, and by such summary Course and Order as is agreeable to Martial Law, and as is used in Armies in time of War, to proceed to the Tryal and Condemnation of such Offenders, and them cause to be Executed and put to Death, according to the Law Martial.

2. By Pretext whereof some of your Majesty's Subjects have been by some of the said Commissioners put to Death, when and where, if by the Laws and Statutes of the Land, they had deserved Death, by the same Laws and Statutes also they might, and by no other ought to have been Judged and Executed.

3. And also sundry grievous Offenders, by Colour thereof, claiming an Exemption, have escaped the Punishments due to them by the Laws and Statutes of this your Realm, by reason that divers of your Officers and Ministers of Justice have unjustly refused or forborne to proceed against such Offenders, according to the same Laws and Statutes, upon pretence that the said Offenders were Punishable only by Martial Law, and by Authority of such Commissions as aforesaid; (2) Which Commissions, and all other of like nature, are wholly and directly Contrary to the said Laws and Statutes of this your Realm.

10. They do therefore humbly pray your most Excellent Majesty, that no Man hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or such like Charge, without Common Consent by Act of Parliament; (12) And that none be called to make Answer, or take such Oath, or to give Attendance, or be Confined, or otherwise Molested or Disquieted concerning the same, or for refusal thereof; (13) And that no Freeman in any such manner as is before mentioned be Imprisoned, or Detained. (14) And that your Majesty would be pleased to remove the said Soldiers and Mariners, and that your People may not be so Burthened in time to come; (15) And that

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the foresaid Commissions for proceeding by Martial Law, may be Revoked and Annulled; and that hereafter no Commissions of like nature may issue forth to any person or persons whatsoever to be Executed as aforesaid, lest by colour of them, any of your Majesty's Subjects be Destroyed, or put to Death contrary to the Laws and Franchise of the Land.

11. All which they most humbly Pray of your most Excellent Majesty, as their Rights and Liberties, according to the Laws and Statutes of this Realm; and that your Majesty would also vouchsafe to declare, That the Awards, Doings and Proceedings to the Prejudice of your People in any of the Premisses, shall not be drawn hereafter into Consequence or Example: (2) And that your Majesty would be also graciously Pleased for the further Comfort and Safety of your People, to declare your Royal Will and Pleasure, that in the things aforesaid all your Officers and Ministers shall serve you according to the Laws and Statutes of this Realm, as they tender the Honour of Your Majesty, and the Prosperity of this Kingdom.

Which Petition being Read the 2d of *June*, 1628, the King's Answer was thus deliver'd unto it:

The King willeth, that Right be done, according to the Laws and Customs of the Realm, and that the Statutes be put in due Execution, that his Subjects may have no Cause to complain of any Wrong, or Oppressions, contrary to their just Rights and Liberties; to the Preservation whereof, he holds himself in Conscience, as well as Obliged, as of his Prerogative.

But this Answer not giving Satisfaction, the King was again Petition'd unto, That he would give a full and satisfactory Answer to their Petition in full Parliament. — Whereupon the King in Person, upon the 7th of *June*, made this Second Answer;

My Lords & Gentlemen,

"THE Answer I have already given you, was made with so good Deliberation, and approved by the Judgment of so many wise Men, that I could not have imagined, but that it

it should have given you full Satisfaction, but to avoid all Ambiguous Words, and to shew you, that there is no Double meaning in my Meaning, I am willing to please you in Words as well as in Substance; read your Petition, and you shall have an Answer, that I am sure will Please you.

And then causing the Petition to be distinctly Read by the Clerk of the Crown, the Clerk of the Parliament read the King's Answer thereto in these Words;

Soit Droit fait, come est Desire.

Which is, *Let Right be Done, as is Desired.* This Answer, and the manner of Confirming this Law, I have the rather Recited, because the King's Answer, and Circumstances relating thereunto, were wholly left out in the Printed Book of *Statutes*.

The *Petition* it self is so plain, that there needs no Comment thereon, only the Reader may observe, That the things therein mention'd, were the *Antient Rights of the People*, and therefore they expresly Demand them of the King, *as their Rights and Liberties*.

In the next place we shall add, the Excellent *Habeas Corpus* Act, because relating to the same Subject, *viz.* The Freeing the Subject from causeless, tedious, and Arbitrary Imprisonments.

Anno Tricesimo primo Caroli Secundi Regis.

CHAP. II.

An Act for the better Securing the Liberty of the Subject, and for prevention of Imprisonments beyond Seas, commonly called the **Habeas Corpus** Act.

I. **Whereas great Delays have been used by Sheriffs, Gaolers, and other Officers, to whose Custody any of the Kings Subjects have been committed for Criminal, or supposed Criminal matters, in making Re-**

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purus of Writs of Habeas Corpus to them directed, by standing out an *Alias*, and Pluries, Habeas Corpus, and sometimes more, and by other Shifts, to avoid their yielding Obedience to such Writs, contrary to their Duty, and the known Laws of the Land, whereby many of the Kings Subjects have been, and hereafter may be long detained in Prison, in such Cases where by Law they are Bailable, to their great Charges and Vexation.

II. For the Prevention whereof, and the more speedy Relief of all Persons Imprisoned for any such Criminal, or suppos'd Criminal matters: (2.) Be it Enacted by the Kings most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority thereof, That whensoever any person or persons, shall bring any Habeas Corpus directed unto any Sheriff, or Sheriffs, Gaoler, Minister, or other person whatsoever, for any person in his or their Custody, and the said Writ shall be served upon the said Officer, or left at the Goal or Prison, with any of the under Officers, under Keepers, or Deputy of the said Officers or Keepers, that the said Officer or Officers, his or their under Officers or Keepers or Deputies, shall within Three Days after the Service thereof, as aforesaid, (unless the Commitment aforesaid were for Treason or Felony, plainly and specially expressed in the Warrant of Commitment) upon payment or tender of the Charges of bringing the said Prisoner to be Ascertained by the Judges, or Court that awarded the same, and Endorsed upon the said Writ, not exceeding Twelve-pence per Mile, and upon Security given by his own Bond, to pay the Charges of carrying back the Prisoner, if he shall be Remanded, by the Court or Judge, to which he shall be brought according to the true intent of this present Act, and that he will not

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make any Cleave by the way, make Return of such Writs. (3.) And being or cause to be brought the Body of the party to Commitment or Detainder, unto, or before, the Lord Chancellor, or Lord Keeper of the Great Seal of England for the time being, or the Justices or Barons of the said Court from whence the said Writ shall issue, or unto and before such other person or persons before whom the said Writ is made returnable, according to the Command thereof. (4.) And shall then likewise certifie the true Cause of his Detainer, or Imprisonment, unless the Commitment of the said party be in any place beyond the distance of three miles from the place or places where such Court or Person is, or shall be sitting; and if beyond the distance of Twenty miles, and not above One Hundred miles, then within the space of Twenty Days after such the Delivery aforesaid, and not longer.

III. And to the Intent that no Sheriff, Gaoler, or other Officer, may pretend Ignorance of the Import of any such Writ, (1.) Be it Enacted by the Authority aforesaid, That all such Writs shall be marked in this manner, Per Statutum Tricesimo Primo Caroli Secundi Regis, and shall be Signed by the Person that Awards the same. (2.) And if any person or persons, shall be, or stand Committed or Detained, as aforesaid, for any Crime, unless for Felony or Treason, plainly expressed in the Warrant of Commitment, in the Vacation time, and out of Term, it shall and may be Lawful to and for the person or persons so Committed or Detained, (other than persons Convict, or in Execution) by Legal Process, or any One on his or their Behalf, to Sue, or Cause to be Sued out of the Office of the Lord Chancellor, or Lord Keeper, or any one of his Majesty's Justices, either of the one Bench, or of the other, or the Barons of the Exchequer of the Degree of the Coif. (3.) And the said

said Lord Chancellor, Lord Keeper, Justices, or Barons, or any of them, upon view of the Copy or Copies of the Warrant or Warrants of Commitment and Detainer, or otherwise upon Oath made, that such Copy or Copies were denied to be given by such person or persons, or any on his, her, or their behalf, Signed and Subscribed by Two Witnesses, who were present at the Delivery of the same, to Award and Grant an Habeas Corpus under the Seal of such Court, whereof he shall then be one of the Judges. (5) To be directed to the Officer or Officers in whose Custody the party so Committed or Detained, shall be Returnable immediately before the said Lord Chancellor or Lord Keeper, or such Justice, Baron, or any other Justice or Baron, of the Degree of the Coif, of any of the said Courts. (6) And upon Service thereof as aforesaid, the Officer or Officers, his or their under Officer or under Officers, under Keeper or under Keepers, or Deputy, to whose Custody the Party is so Committed or Detained, shall within the times respectively before Limited, bring such Prisoner or Prisoners before the said Lord Chancellor or Lord Keeper, or such Justices, Barons, or one of them, before whom the said Writ is made Returnable, and in case of his Absence, before any other of them, with the Return of such Writ, and the true Causes of the Commitment and Detainer. (7) And thereupon within Two Days after, the Party shall be brought before them, the said Lord Chancellor, or Lord Keeper, or such Justice, or Baron, before whom the Prisoner shall be brought as aforesaid, shall Discharge the said Prisoner from his Imprisonment, taking his or their Recognizance, with one or more Surety or Sureties in any Sum, according to their Discretion, having regard to the Quality of the Prisoner, and Nature of the Offence, for his or their Appearance in the Court of King's-

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Bench the Term following, or at the next Assizes, Sessions, or general Goal-Delivery of and for such County, City, or Place, where the Commitment was, or where the Offence was Committed, or in such other Court where the said Offence is properly Recognizable, as the Case shall require, and then shall Certify the said Writ with the Return thereof, and the said Recognizance or Recognizances into the said Court, where such Appearance is to be made. (8) Unless it shall appear unto the said Lord Chancellor, or Lord Keeper, or Justice or Justices, Baron or Barons, that the Party so Committed is Detained upon a Legal Process, Order, or Warrant out of some Court that hath Jurisdiction of Criminal matters, or by some Warrant Signed and Sealed with the Hand and Seal of any of the said Justices or Barons, or some Justice or Justices of the Peace, for such matters or offences, for the which by the Law the Prisoner is not Bailable.

IV. Provided always, and be it Enacted, That if any person shall have wilfully neglected by the space of Two whole Terms after his Imprisonment, to pray a Habeas Corpus for his Enlargement such person so wilfully Neglecting, shall not have any Habeas Corpus to be granted in Vacation time in pursuance of this Act.

V. Be it further Enacted by the Authority aforesaid, That if any Officer or Officers, his or their under Officer, under Officers, under Keeper or under Keepers, or Deputy, shall Neglect or Refuse to make the Returns aforesaid, or to bring the Body or Bodies of the Prisoners, according to the Command of the said Writ, within the Respective times aforesaid, or upon Demand made by the Prisoner, or Person in his Behalf, shall Refuse to deliver, or within the space of Six Hours after Demand, shall not deliver to the Person so demanding, a true Copy of the Warrant or Warrants

rants of Commitment and Detainer of such Prisoner, which he or they are hereby Required to deliver accordingly, all and every the Head Goalers and Keepers of such Prisons, and such other Person, in whose Custody the Prisoner shall be detained, shall for the First Offence, forfeit to the Prisoner, or Party Grieved, the Sum of One Hundred Pounds: (2) And for the Second Offence, the Sum of Two Hundred Pounds, and shall be is hereby made incapable to Hold or Execute his said Office: (3) The said Penalties to be Recovered by the Prisoner or Party Grieved, his Executors or Administrators, by any Action of Debt, Suit, Bill, Plaint, or Information, in any of the King's Courts at Westminster, wherein no Essoign, Protection, Priviledge, Injunction, Wager of Law, or stay of Prosecution by Non vult ulterius prosequi, or otherwise, shall be Admitted, or Allowed, or any more than One Imparlance. (4) And any Recovery or Judgment at the Suit of any Party Grieved, shall be a sufficient Conviction for the First Offence; and any after Recovery or Judgment at the Suit of a Party Grieved for any Offence after the First Judgment, shall be a sufficient Conviction to bring the Officers or Person within the said Penalty for the Second Offence.

VI. And for the prevention of unjust Vexation, by Reiterated Commitments for the same; (1) Be it Enacted by the Authority aforesaid, That no Person, or Persons, which shall be Delivered or set at Large upon any Habeas Corpus, shall at any time hereafter be again Imprisoned or Committed for the same Offence, by any Person or Persons whatsoever, other than by the Legal Order, and Process of such Court wherein he or they shall be Bound by Recognizance to appear, or other Court having Jurisdiction of the Cause. (2) And if any other Person or Persons shall knowingly con-

trary to this Act, Recommit or Imprison, or knowingly Procure or Cause to be Recommitted or Imprisoned for the same Offence, or pretended Offence, any Person or Persons Delivered or set at Large as aforesaid, or be knowingly Aiding or Assisting therein, then he or they shall Forfeit to the Prisoner or Party Grieved, the Sum of Five Hundred Pounds, any colourable Pretence or Variation in the Warrant or Warrants of Commitment notwithstanding, to be Recovered as aforesaid.

VII. Provided always, and be it further Enacted, That if any Person or Persons shall be Committed for High Treason or Felony, Plainly and Specially Expressed in the Warrant of Commitment, upon his Prayer or Petition in open Court the first Week of the Term, or first Day of the Sessions of Oyer and Terminer, or General Goal-Delivery, to be Brought to his Tryal, shall not be Indicted sometime in the next Term, Sessions of Oyer and Terminer, or General Goal-Delivery after such Commitment, It shall and may be Lawful to and for the Judges of the Court of King's Bench, and Justices of Oyer and Terminer, or General Goal-Delivery, and they are hereby Required upon Motion to them made in open Court the last Day of the Term, Sessions, or General Goal-Delivery, either by the Prisoner, or any one in his Behalf, to set at Liberty upon Bail, unless it appear to the Judges and Justices upon Oath made, that the Witnesses for the King could not be produced the same Term, Sessions, or General Goal-Delivery. (2) And if any Person or Persons Committed as aforesaid, upon his Prayer or Petition in open Court, the First Week of the Term, or First Day of the Sessions of Oyer and Terminer, and General Goal-Delivery, to be brought to his Tryal, shall not be Indicted and Tryed the Second Term, Sessions of Oyer and Terminer, or General Goal-Delivery, after his Commit-

Committment, or upon his Tryal shall be Acquitted, he shall be Discharged from his Imprisonment.

VIII. Provided always, That nothing in this Act shall extend to Discharge out of Prison any Person charged in Debt, or other Action, or with process in any Civil Cause, but that after he shall be Discharged of his Imprisonment for such his Criminal Offence, he shall be kept in custody according to Law for such other Suit.

IX. Provided always, and be it Enacted by the Authority aforesaid, That if any person or persons Subjects of this Realm, shall be committed to any prison, or in custody of any Officer or Officers whatsoever, for any Criminal or supposed Criminal matter, That the said person shall not be Removed from the said prison and custody, into the custody of any other Officer or Officers; (2) Unless it be by Habeas Corpus, or some other Legal Writ; or where the prisoner is delivered to the Constable or other inferiour Officer to carry such prisoner to some common Goal; (3) Or where any person is sent by Order of any Judge of Assize, or Justice of the Peace to any common Workhouse, or House of Correction; (4) Or where the prisoner is Removed from one prison or place to another within the same County, in order to his or her Tryal or Discharge in due course of Law: (5) Or in case of sudden Fire, or Infection, or other Necessity. (6) And if any person or persons shall after such Committment aforesaid, make out and Sign, or Countersign any Warrant or Warrants for such Removal aforesaid, contrary to this Act, as well he that makes or Signs, or Countersigns such Warrant or Warrants, as the Officer or Officers, that obey or execute the same, shall Suffer and Incur the Pains and Forfeitures in this Act before-mentioned, both for the First and Second Offence, Respectively, to be

Recovered in manner aforesaid, by the party grieved.

X. Provided also, and be it further Enacted by the Authority aforesaid, That it shall and may be Lawful to and for any prisoner and prisoners as aforesaid, to move, and obtain his or their Habeas Corpus, as well out of the High Court of Chancery, or Court of Exchequer, as out of the Courts of King's-Bench, or Common-Pleas, or either of them. (2) And if the said Lord Chancellour, or Lord Keeper, or any Judge or Judges, Baron or Barons for the time being, of the Degree of the Coif of any of the Courts aforesaid in the Vacation time, upon view of the Copy or Copies of the Warrant or Warrants of Commitment or Detainer, or upon Oath made, that such Copy or Copies were denied as aforesaid, shall deny any Writ of Habeas Corpus by this Act Required to be Granted, being moved for as aforesaid, they shall severally forfeit to the Prisoner or party Grieved, the Sum of Five Hundred Pounds, to be Recovered in manner aforesaid.

XI. And be it Enacted, and declared by the Authority aforesaid, That an Habeas Corpus according to the true Intent and Meaning of this Act, may be directed, and Run into any County Palatine, the Cinque Ports, or other privileged Places within the Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed, and the Isles of Jersey, or Guernsey, any Law or Usage to the contrary notwithstanding.

XII. And for preventing Illegal Imprisonments in Prisons beyond Seas, (2.) Be it further Enacted by the Authority aforesaid, That no Subject of this Realm that now is, or hereafter shall be an Inhabitant or Resident of this Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed, shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or

or into any parts, Garisons, Islands, or places beyond the Seas, which are, or at any time hereafter, shall be within or without the Dominions of his Majesty, his Heirs or Successours. (3.) And that every such Imprisonment is hereby Enacted and adjudged to be Illegal. (4) And that, if any of the said Subjects now is, or hereafter shall be so Imprisoned, every such person and persons so Imprisoned, shall and may for every such Imprisonment, maintain by vertue of this Act, an Action or Actions of false Imprisonment, in any of his Majesty's Courts of Record, against the person or persons, by whom he or she shall be so Committed, Detained, Imprisoned, sent Prisoner, or Transported contrary to the true Meaning of this Act, and against all or any person or persons that shall Frame, Contrive, Write, Seal or Countersign any Warrant or Writing for such Commitment, Detainer, Imprisonment or Transportation, or shall be advising, aiding, or assisting in the same, or any of them. (5.) And the Plaintiff in every such Action, shall have Judgment to Recover his Treble Costs, besides Damages; which Damages so to be Given, shall not be less than Five Hundred Pounds. (6) In which Action, no Delay, Stay, or Stop of Proceeding, by Rule, Order, or Command, nor no Injunction, Protection, or Priviledge whatsoever, nor any more than One Imparlance shall be Allowed, Excepting such Rule of the Court wherein the Action shall be Laid, made in open Court, as shall be Thought Fit and Necessary, for Special Cause to be Shewn in the said Rule. (7) And the person or persons who shall knowingly frame, contrive, write, seal, or countersign any Warrant for such commitment, detainer, or transportation, or shall so commit, detain imprison, or transport any Person, or Persons, contrary to this Act, or be any ways advising, aiding,

ading or aſſiſting therein, being Lawfully Convicted thereof, ſhall be diſabled from thenceforth to bear any Office of Truſt or Profit within the ſaid Realm of England, Dominion of Wales, or Town of Berwick upon Tweed, or any of the Iſlands, Territories or Dominions thereunto belonging. (8) And ſhall incur and ſuſtain the pains, penalties, and forfeitures, limited, ordained, and provided in and by the Statute of Præmunire, made in the Thirteenth Year of King Richard the Second. (9) And be incapable of any pardon from the King, his Heirs or Succeſſours, of the ſaid Forfeitures, Loſſes, or Diſabilities, or any of them.

XIII. Provided always, That nothing in this Act extend to give Benefit to any perſon who ſhall by Contract in Writing, agree with any Merchant or Owner, of any Plantation, or other perſon whatſoever, to be tranſported beyond the Seas, and receive Earneſt upon ſuch Agreement, although that afterwards ſuch perſon ſhall Renounce ſuch Contract.

XIV. Provided always, and be it Enacted, That if any perſon or perſons, lawfully Convicted of any Felony, ſhall in open Court pray to be tranſported beyond the Seas, and the Court ſhall think fit to leave him or them in priſon for that purpoſe, ſuch perſon or perſons may be Tranſported into any parts beyond the Seas: This Act, or any thing therein Contained to the Contrary, notwithſtanding.

[illegible] alſo, and be it Enacted, That nothing herein Contained, ſhall be Deemed, Conſtrued or Taken to Extend to the Impriſonment of any perſon before the Firſt Day of June, One Thouſand Six Hundred Seventy and Nine, or to any thing Done, Acted, Executed, or otherwiſe Done, relating to ſuch Impriſonment: Any thing herein Contained to the Contrary notwithſtanding.

XVI. Provi-

XVI. Provided also, That if any person or persons, at any time resident in this Realm, shall have committed any Capital Offence in Scotl. or Ireland, or any of the Islands, or Foreign Plantations of the King, his Heirs, or Successours, where he or she ought to be tryed for such Offence, such person or persons may be sent to such place, there to receive such Tryal, in such manner as the same might have been used before the making of this Act, any thing herein contained to the contrary Notwithstanding.

XVII. Provided always, and be it Enacted, That no person or persons, shall be Sued, Impleaded, Molested, for the same within two years at the most after such time wherein the Offence shall be Committed, in Case the party Grieved shall not be then in prison, and if he shall be in prison, then within the space of two Years after the Decease of the person imprisoned, or his, or her delivery out of prison, which shall first happen.

XVIII. And to the intent no person may avoid his Tryal at the Assizes, or General Goal Delivery, by procuring his Removal before the Assizes at such time as he cannot be brought back to receive his Tryal there: (2) Be it Enacted, That after the Assizes proclaimed for that County where the prisoner is detained, no person shall be Removed from the common Goal upon any Habeas Corpus granted in pursuance of this Act, but upon any such Habeas Corpus, shall be brought before the Judge of Assize in open Court, who is thereupon to do what to Justice shall appertain.

XIX. Provided nevertheless, That after the Assizes are ended, any person or persons detained may have his or her Habeas Corpus, according to the Direction and Intention of this Act.

XX. And be it also Enacted by the Authority aforesaid, That if any Information, Suit, or Action, shall be Brought, or Exhibited against any person or persons, for any Offence committed against the Form of this Law, it shall be Lawful for such Defendants to plead the General Issue, that they are not Guilty, or that they own Nothing, and to give such special Matter in Evidence to the Jury, that shall Try the same, which Matter being Pleaded, had been Good and Sufficient in Law to have Discharged the said Defendant or Defendants against the said Information, Suit, or Action, and the said Matter shall then be as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth, or alledged the same Matter in Bar, or Discharge of such Information, Suit, or Action.

XXI. And because many times persons charged with Petty-Treason or Felony, or as Accessaries thereunto are committed upon Suspicion only, whereupon they are Bailable or not, according as the Circumstances making out that Suspition are more or less weighty, which are best known to the Justices of Peace that committed the Persons, and have the Examination before them, or to other Justices of Peace in the County. (2) Be it therefore Enacted, That where any Person shall appear to be committed by any Judge, or Justice of the Peace, and charged Accessary before the Fact, to any petty Treason or Felony, or upon Suspition thereof or with Suspicion of petty Treason or Felony, which petty Treason or Felony, shall be plainly and specially expressed in the Warrant of Commitment, that such person shall not be Removed or Bailed by vertue of this Act, or in any other manner than they might have been before the making of this Act.

The

The Comment.

THere are three things, which the Law of *England* (which is a Law of Mercy) principally Regards and taketh care of, *viz. Life*, *Liberty* and *Eſtate*. Next to a Man's Life, the neareſt thing that concerns him, is *Freedom of his Perſon*; For indeed, what is Impriſonment, but a kind of Civil Death? Therefore ſaith *Forteſcue*, Cap. 42. *Anglia Jura in omni Caſu Libertati dant favorem.* The Laws of *England* do, in **All Caſes**, favour Liberty.

Touching Commitments, and what is required to make a *Legal Mittimus*, ſee before *Page* 24.

The Writ of *Habeas Corpus* is a Remedy given by the Common-Law, for ſuch as were unjuſtly detained in Cuſtody, to procure their Liberty: But before this Statute, was rendered far leſs uſeful than it ought to be, partly by the Judges, pretending a Power to Grant, or deny the ſaid Writ at their pleaſure, in many caſes, and eſpecially by the ill Practices of Sheriffs and Goalers, by putting the Priſoner to the Charge and Trouble of an *Alias* and *Pluries* (that is, a ſecond and third Writ, before they would obey the firſt, for there was no Penalty till the Third) and then at laſt, the Judges would oft-times alledge, That they could not take Bail, becauſe the Party was a *Priſoner of State*, &c. Therefore to Remedy all thoſe Miſchiefs, this moſt wholſom Law was provided, which we ſhall briefly indeavour to divide into its ſeveral Branches, and explain it to the meaneſt Capacities, ſince no Man is ſure, but one time or other, he may have occaſion to make uſe of it.

The Act concerneth either firſt, Perſons committed for ſome other Crimnal, or ſuppoſed Criminal matter, beſides Treaſon or Felony, and theſe are to have an *Habeas Corpus* immediately. 2. Such who in their *Mittimus* are charged with Treaſon and Felony, and theſe ſhall have the Benefit of the ſaid Writ, after the time

herein limited. 1. If any Goaler, or Under-Keeper, shall not deliver a true Copy of the *Mittimus* within six hours after the Prisoner demands it, the Head-Goaler or Keeper forfeits to the Prisoner for the first Offence, 100 *l.* for the second Offence 200 *l.* and loses his Place. Nor is there any Fee to be paid for the same, the Turn-key must deliver it at his peril. And note, If the Prisoner should be lock'd up, or none suffered to come at him, any Friend of his may demand the same on his behalf.

2. Whatever the Criminal matter be, If Treason or Felony be not expresly charged, any Person on the Prisoner's behalf, carrying such true Copy of the Commitment to the Lord Chancellor, or any one of the Judges, or Barons of the Exchequer, or upon Oath made, that a Copy was demanded, and denied, he shall grant an *Habeas Corpus*, or forfeit 500 *l.* to the Prisoner. But note, The Request must be made to such Judge in Writing, and attested by two Witnesses.

3. If the Sheriff, or Goaler, do not carry up the Prisoner, and return the true causes of his Detainour, within three days, if under twenty Miles distance; or within ten days, if above twenty and under an hundred Miles; or within twenty days, if above an hundred Miles, he forfeits 500 *l.* to the Prisoner.

Note, The Prisoner must pay the Charges of his carrying up; and the Judge, when he grants the Writ, may order how much, but it must not be above 12 *d.* a Mile.

If upon the Return of such *Habeas Corpus*, it appear the Prisoner is not charged with Treason or Felony, specially and plainly expressed, or for such Matters as, by Law, are not Bailable, the Judge shall discharge the Prisoner upon Bail.

4. If a Person once so Bailed out, shall again be Imprisoned for the same Offence, those that do it forfeit 500 *l.*

5. If there be High Treason, or Felony, plainly and specially expressed, [That is, not only Generally, for Treason;

Treaſon or Felony, but Treaſon in conſpiring to kill the King, or in Counterfeiting the King's Coin, or Felony, for Stealing the Goods of ſuch an one, to ſuch a value, *&c.*] Then the Priſoner cannot have his *Habeas Corpus*, till firſt he has, on the firſt Week of the Term, or firſt day of Seſſions of *Oyer* and *Terminer*, or General Goal-delivery, petitioned in open Court, to be brought to his Tryal; and then if he be not brought to Tryal the next Term, or Seſſions following, on the laſt day thereof, he ſhall be Bailed; and if not Indicted the ſecond Term or Seſſions, ſhall be diſcharged.

6. This Act extends to all places within *England* and *Wales*, the *Tower* cannot be ſuppoſed to be exempted, nor *Windſor-Caſtle*, nor any ſuch Royal Forts; for the words are general. And beſides, there is a ſpecial Act of Parliament, that unites the King's Caſtles to the Counties wherein they ſtand, there having been, it ſeems, ſome Pretentions, and ill Practices, to hold them diſtinct, that therein they might detain Men Priſoners againſt Law, and not admit any Writ to enlarge them. For Remedy whereof it was thus Enacted;

Anno 13 Rich. Secundi.

Item. *IT is Ordained and Aſſented, That the King's Caſtles and Goals, which were wont to be joyned to the Bodies of the Counties, and be now ſevered, ſhall be rejoyned to the ſame Counties.*

Laſtly, No Perſon ſhall be ſent Priſoner out of *England* or *Wales*, into *Scotland*, *Ireland*, *Jerſey*, *Guernſey*, *Tangier*, or any other place beyond the Seas.

The Proviſo's, and other Clauſes of this Act, may be eaſily apprehended by the meaneſt Capacities.

And, As the Law provides thus for our Liberty, ſo it takes care, that thoſe that are in Cuſtody, ſhall not be Abuſed or Oppreſſed; to which purpoſe I ſhall here inſert ſo much as is material and neceſſary to be known

known by all Persons, who are so unhappy to be Prisoners, out of the Statute of the 22d and 23d *Car.* 2. cap. 20. The words whereof are as follows.

WHereas Persons that are under Arrests, or committed to the Custody of Sheriffs, Bailiffs, Goalers, Keepers of Prisons, or Goals, are much abused and wronged by Extorting of great Fees, Rewards, and other Exactions, and put to great Expences under Pretences of Favour, or otherwise, whereby they are greatly Oppressed, and many times Ruined in their Estates. (2) *For Remedy thereof, Be it Enacted by the Authority aforesaid, That if any Under-Sheriff, Bailiff, Serjeant at Mace, or other Officer or Minister whatsoever, shall at any time, or times hereafter, have in his or their Custody, any Person or Persons, by vertue or colour of any Writ, Process, or other Warrant whatsoever, it shall not be lawful for such Officer or Officers, to convey or carry, or cause to be conveyed or carried, the said Person or Persons, to any Tavern, Ale-House, or other Publick Victualling or Drinking-House, without the free and voluntary Consent of the said Person or Persons, so as to charge such Prisoner with any Sum of Money for any Wine, Beer, Ale, Victuals, Tobacco, or any other things whatsoever, but what the said Person or Persons shall call for, of his, her, or their own accord.* (3) *And shall not demand, take, or receive, or cause to be demanded, taken, or received, directly or indirectly, any other, or greater Sum or Sums, than what, by Law, ought to be taken or demanded for such Arrest, taking, or waiting (until such Person or Persons shall have procured an Appearance, found Bail, agreed with his or their Adversaries, or be sent to the proper Goal belonging to the County, City, Town or Place, where such Arrest or taking shall be.)* (4) *Nor take and exact any other Reward or Gratuity for so keeping the said Person or Persons out of the Goal or Prison, than what he, she or they, shall or will, of his, her, or their own accord, voluntarily and freely give.* (5) *Nor take, nor receive any other, or greater Sum or Sums, for each nights Lodging, or other Expences, than what is reasonable and fitting in such cases, or shall be so adjudged by the next Justice of the*

Peace:

Peace, or at the next Quarter-Sessions. (6) *And shall not cause, or procure, the said Person or Persons, to pay for any other Wine, Beer, Ale, Victuals, Tobacco, or other things, than what the said Person or Persons shall voluntarily, freely, and particularly call for.*

And that every Under-Sheriff, Gaoler, Keeper of Prison or Goal, and every Person or Persons whatsoever, to whose Custody any Person or Persons shall be delivered or committed, by virtue of any Writ of Process, or any Pretence whatsoever, shall permit or suffer the said Person or Persons, at his and their Will and Pleasure, to send for, and have any Beer, Ale, Victuals, and other necessary Food, where, and from whence they please: And also to have and use such Bedding, Linnen, and other things, as the said Person or Persons shall think fit, without any purloyning, detaining, or paying for the same, or any part thereof; nor shall demand, take or receive of the said Person or Persons, any other, or greater Fee or Fees whatsoever, for his, her, or their Commitment, Release or Discharge; or for his, her, or their Chamber-Rent, than what is allowable by Law, until the same shall be settled by three Justices of the Peace, whereof one to be of the Quorum, *of each particular County, City, and Town-Corporate, in their several Precincts; and for the City of* London, *and Counties of* Middlesex *and* Surrey, *the two Lord Chief Justices of the* King's-Bench *and* Common-Pleas, *and the Lord Chief Baron, or any two of them; and the Justices of the Peace of the same, in their several Jurisdictions.*

And likewise that the said Lord Chief Justice, Lord Chief Baron, and Justices of the Peace, in their several Jurisdictions, and all Commissioners for Charitable Uses, do their best Endeavours, and Diligence, to Examine, and find out the several Legacies, Gifts and Bequests, bestowed and given for the Benefit and Advantage of the Poor Prisoners for Debt; in the several Goals and Prisons in this Kingdom, and to send for any Deeds, Wills, Writings, and Books of Accompts whatsoever; and any Person or Persons concerned therein, and to Examine them upon Oath, to make true Discovery thereof, (which they have full Power and Authority hereby

to

to do) and the same so found out and ascertained, to order and settle in some manner and ways that the Prisoners hereafter may not be defrauded, but receive the full Benefit thereof, according to the true Intent of the Donors.

And that these Accounts of the several Legacies, Gifts and Requests, given and bestowed upon the several Prisoners for Debt, within this Kingdom, and the several Rates of Fees, and the future Government of Prisons, be signed and confirmed by the Lord Chief Justices, and the Lord Chief Baron, or any two of them for the time being, and the Justices of the Peace in London, Middlesex and Surrey; and by the Judges for the several Circuits, and Justices of the Peace for the time being, in their several Precincts, and fairly written, and hung up in a Table in every Goal and Prison, before the first day of November 1671. and likewise be Registred by each, and every Clerk of the Peace within his or their particular Jurisdiction: And after such Establishment, no other or greater Fee or Fees than shall be so Established, shall be Demanded or Received.

And whereas it is become the common Practice of Goalers, and Keepers of Newgate, the Gate-house at Westminster, and sundry other Goals and Prisons, to Lodge together in one Room, or Chamber and Bed, Prisoners for Debt, and Felons, whereby many times honest Gentlemen, Trades-men and others, Prisoners for Debt, are disturbed and hindered in the night-time from their natural Rest, by reason of their Fetters and Irons, and otherwise much offended and troubled by their lewd and prophane Language and Discourses, with most horrid Cursing and Swearing (much accustomed to such Persons.) (2.) Be it Enacted by the Authority aforesaid, That it shall not be lawful hereafter, for any Sheriff, Goaler, or Keeper of any Goal or Prison, to put, keep or Lodge Prisoners for Debt, and Felons, together in one Room or Chamber; but that they shall be put, kept, and Lodged separate and apart one from another, in distinct Rooms. (3.) Upon pain that he, she, or they, shall offend against this Act, or the true Intent and Meaning thereof, or any part thereof, shall forfeit and lose his or her Office, Place or Imployment, and shall forfeit treble Damages to the Party grieved, to be Recovered

by

by virtue of this Act, any Law, Statute, Usage or Custom to the contrary in any wise notwithstanding.

And to the End that English-men may more entirely enjoy their due Freedoms, the Prudence of our Legislators have thought fit, from time to time, to remove Incroachments thereupon, though under Pretence of Jurisdictions and Courts of Justice; and to prohibit any Exorbitant Arbitrary Power for the future, but that all things may be left to the calm and equal Proceedings of Law; and that most excellent Method of Trial by *Juries*, one of the principal Bulwarks of *England*'s Liberties. For an Instance hereof, take the Act following.

An Act for Regulating of the Privy Council, and for taking away the Court, commonly called the *Star-Chamber*.

WHereas by the Great Charter, many times confirmed in Parliament, it is Enacted, That no Freeman shall be taken or Imprisoned, or Disseized of his Freehold or Liberties, or Free Customs, or be Out-lawed or Exiled, or otherwise destroyed; and that the King will not pass upon him, or condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. (2.) And by another Statute made the fifth Year of the Reign of King Edward, it is Enacted, That no Man shall be Attached by any Accusation, nor forejudged of Life or Limb, nor his Lands, Tenements, Goods nor Chattels, seized into the King's Hands, against the Form of the Great Charter, and the Law of the Land. (3.) And by another Statute made in the Five and twentieth Year of the Reign of the same King Edward the Third, it is Accorded, Assented, and Established, That none shall be taken by Petition, or Suggestion, made to the King, or to his Council, unless it be by Indictment or Presentment of good and lawful People of the same Neighbourhood, where such Deeds be done, in due manner, or by Process made by Writ Original at the

the Common-Law; and that none be put out of his Franchiſe or Freehold, unleſs he be duly brought in to Anſwer, and fore-judged of the ſame by the courſe of the Law: And if any thing be done againſt the ſame, it ſhall be Redreſſed, and holden for none. (4) *And by another Statute made in the eight and twentieth Year of the Reign of the ſame King* Edward *the Third, it is, amongſt other things, Enacted, That no Man, of what Eſtate and Condition ſoever he be, ſhall be put out of his Lands or Tenements, nor taken, nor Impriſoned, nor Diſ-inherited, without being brought in to Anſwer by due Proceſs of Law.* (5) And by another Statute made in the two and fortieth Year of the Reign of the ſaid King *Edward* the Third, it is Enacted, *That no Man be put to Anſwer without Preſentment before Juſtices, or matter of Record, or by due Proceſs, and Writ Original, according to the Old Law of the Land: And if any thing be done to the contrary, it ſhall be void in Law, and holden for Error.* (6) And by another Statute, in the ſix and thirtieth Year of the Reign of the ſame King *Edward* the Third, it is, among other things, Enacted, *That all Pleas, which ſhall be pleaded in any Courts, before any of the King's Juſtices, or in his other places, or before any of his other Miniſters, or in the Courts and places of any other Lords within the Realm, ſhall be Entred and Enrolled in Latin.* (7) *And whereas by the Statute made in the third Year of King* Henry *the Seventh, Power is given to the Chancellor, the Lord Treaſurer of* England *for the time being, and the Keeper of the King's Privy Seal, or two of them, calling unto them a Biſhop, and a Temporal Lord, of the King's Moſt Honourable Council, and the two Chief Juſtices of the* King's-Bench *and* Common-Pleas *for the time being, or other two Juſtices in their Abſence, to proceed as in that Act is expreſſed, for the Puniſhment of ſome particular Offences therein mentioned.* (8) *And by the Statute made in the one and twentieth Year of King* Henry *the Eighth, The Preſident of the Council is Aſſociated to joyn with the Lord Chancellor, and other Judges in the ſaid Statute of the Third of* Henry *the Seventh mentioned.* (9) *But the ſaid Judges have not kept themſelves*

to

to the Points limited by the ſaid Statute, but have undertaken to puniſh where no Law doth warrant, and to make Decrees for things, having no ſuch Authority, and to Inflict heavier Puniſhments, than by any Law is warranted.

2. And foraſmuch as all Matters Examinable or Determinable before the ſaid Judges, or in the Court commonly called the Star-Chamber, may have their proper Remedy and Addreſs, and their due Puniſhment and Correction by the Common Law of the Land, and in the ordinary courſe of Juſtice elſewhere. (2) And foraſmuch as the Reaſons and Motives, inducing the Erection and Continuance of that Court, do now ceaſe: (3) And the Proceedings, Cenſures and Decrees of that Court, have by Experience been found to be an Intollerable Burthen to the Subject, and the means to introduce an Arbitrary Power and Government. (4) And foraſmuch as the Council-Table hath of late times aſſumed unto it ſelf, a Power to Intermeddle in Civil, and Matters only of private Intereſt between Party and Party, and have adventured to determine of the Eſtates and Liberties of the Subjects, contrary to the Law of the Land, and the Rights and Priviledges of the Subject, by which great and manifold Miſchiefs and Inconveniencies have ariſen and happened, and much Uncertainty, by means of ſuch Proceedings, hath been conceived, concerning Mens Rights and Eſtates; for ſettling whereof, and preventing the like in time to come,

3. Be it Ordained and Enacted by the Authority of this preſent Parliament, That the ſaid Court, commonly called the Star-Chamber, and all Juriſdiction, Power and Authority, belonging unto, or Exerciſed in the ſame Court, or by any the Judges, Officers or Miniſters thereof, be from the firſt day of Auguſt, in the Year of our Lord God, One thouſand ſix hundred forty and one, clearly and abſolutely diſſolved, taken away and determined. (2) And that from the ſaid firſt day of Auguſt, neither the Lord Chancellor, or Keeper of the Great Seal of England, the Lord Treaſurer of England, the Keeper of the King's Privy Seal, or Preſident of the Council, nor any Biſhop, Temporal Lord, Privy-Councellor, or Judge, or Juſtice whatſoever, ſhall have any Power or Authority to hear, examine or determine any mat-

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ter or thing whatsoever in the said Court, commonly called the Star-Chamber, *or to make, pronounce, or deliver, any Judgment, Sentence, Order or Decree; or to do any Judicial or Miniſterial Act in the ſaid Court.* (3) *And that all and every Act and Acts of Parliament, and all and every Article, Clauſe, and Sentence in them, and every of them, by which any Juriſdiction, Power or Authority is given, Limited or appointed, unto the ſaid* Court, *commonly called the* Star-Chamber, *or unto all, or any the Judges, Officers or Miniſters thereof, or for any Proceedings to be had or made in the ſaid Court, or for any matter or thing to be drawn into queſtion, Examined or determined there, ſhall for ſo much as concerneth the ſaid* Court of Star-Chamber, *and the Power and Authority thereby given unto it, be from the ſaid firſt day of* Auguſt *Repealed, and Abſolutely Revoked and made void.*

4. *And be it likewiſe Enacted, That the like Juriſdiction now uſed and exerciſed in the Court, before the Preſident and Council in the* Marches *of* Wales: (2) *And alſo in the Court, before the Preſident and Council Eſtabliſhed in the Northern Parts.* (3) *And alſo in the Court commonly called, the Court of the Dutchy of* Lancaſter, *held before the Chancellor and Council of that Court.* (4) *And alſo in the Court of Exchequer of the County Palatine of* Cheſter, *held before the Chamberlain and Council of that Court.* (5) *The like Juriſdiction being exerciſed there, ſhall from the ſaid firſt day of* Auguſt, *One thouſand ſix hundred forty and one, be alſo Repealed and Abſolutely Revoked, and made void; any Law, Preſcription, Cuſtom or Uſage, or the ſaid Statute made in the third year of King* Henry *the Seventh, or the Statute made the one and twentieth of* Henry *the Eighth, or any Act or Acts of Parliament heretofore had or made, to the contrary thereof in any wiſe notwithſtanding.* (6) *And that from henceforth no Court, Council, or place of Judicature ſhall be Erected, Ordained, Conſtituted or Appointed, within this Realm of* England, *or Dominion of* Wales, *which ſhall have, uſe or exerciſe, the ſame, or the like Juriſdiction, as is or hath been uſed, practiſed, or exerciſed in the ſaid* Court of Star-Chamber.

5. *Be*

5. *Be it likewise Declared and Enacted by Authority of this present Parliament, That neither His Majesty, nor his Privy Council, have, or ought to have, any Jurisdiction, Power or Authority by English Bill, Petition, Articles, Libel, or any other Arbitrary way whatsoever, to examine or draw into question, determine or dispose of the Lands, Tenements, Hereditaments, Goods, or Chattels, of any of the Subjects of this Kingdom; but that the same ought to be tryed and determined in the ordinary Courts of Justice, and by the ordinary course of the Law.*

6. *And be it further provided and Enacted, That if any Lord Chancellor, or Keeper of the Great Seal of* England, *Lord Treasurer, Keeper of the King's Privy Seal, President of the Council, Bishop, Temporal Lord, Privy-Councillor, Judge or Justice whatsoever, shall offend, or do any thing contrary to the Purport, true Intent and Meaning of this Law, Then he or they shall, for such Offence, forfeit the Sum of Five hundred Pounds of lawful Money of* England, *unto any Party grieved, his Executors or Administrators, who shall really prosecute for the same, and first obtain Judgment thereupon, to be recovered in any Court of Record at* Westminster, *by Action of Debt, Bill, Plaint, or Information, wherein no Essoign, Protection, Wager of Law, Aid-prayer, Privilege, Injunction or Order of Restraint, shall be in any wise prayed, granted or allowed; nor any more than one Imparlance.* (2) *And if any Person, against whom any such Judgment or Recovery shall be had as aforesaid, shall, after such Judgment or Recovery, offend again in the same, then he or they, for such Offence, shall forfeit the Sum of One thousand Pounds of lawful Money of* England, *unto any Party grieved, his Executors or Administrators, who shall really prosecute for the same, and first obtain Judgment thereupon, to be recovered in any Court of Record at* Westminster, *by Action of Debt, Bill, Plaint, or Information, in which no Essoign, Protection, Wager of Law, Aid-prayer, Privilege, Injunction or Order of Restraint, shall be in any wise prayed, granted or allowed; nor any more than one Imparlance.* (3) *And if any Person, against whom any such second Judgment or Recovery shall be had as aforesaid, shall, after*

such

such Judgment or Recovery, offend again in the same kind, and shall be thereof duly convicted by Indictment, Information, or any other lawful way or means, that such Person so convicted, shall be from thenceforth disabled, and become, by virtue of this Act, incapable, ipso facto, *to bear his and their said Office and Offices respectively.* (4) *And shall be likewise disabled to make any Gift, Grant, Conveyance, or other Disposition of any of his Lands, Tenements, Hereditaments, Goods or Chattels; or to take any Benefit of any Gift, Conveyance or Legacy, to his own use.*

7. *And every Person so offending, shall likewise forfeit and lose to the Party grieved, by any thing done, contrary to the true intent and meaning of this Law, his treble Damages, which he shall sustain and be put unto, by means or occasion of any such Act or thing done, the same to be recovered in any of His Majesty's Courts of Record at* Westminster, *by Action of Debt, Bill, Plaint, or Information, wherein no Essoign, Protection, Wager of Law, Aid-prayer, Priviledge, Injunction, or Order of Restraint, shall be in any wise prayed, granted or allowed, nor any more than one Imparlance.*

8. *And be it also provided and Enacted, That if any Person shall hereafter be Committed, Restrained of his Liberty, or suffer Imprisonment, by the Order or Decree of any such* Court of Star-Chamber, *or other Court aforesaid, now, or at any time hereafter, having, or pretending to have, the same, or like Jurisdiction, Power or Authority, to Commit or Imprison as aforesaid.* (2) *Or by the Command or Warrant of the King's Majesty, His Heirs and Successors, in their own Person; or by the Command or Warrant of the Council-board; or of any of the Lords, or others of His Majesty's Privy-Council.* (3) *That in every such case, every Person so Committed, Restrained of his Liberty, or suffering Imprisonment, upon demand or motion made by his Council, or other imployed by him for that purpose, unto the Judges of the Court of King's-Bench, or Common-Pleas, in open Court, shall without delay, upon any Pretence whatsoever, for the Ordinary Fees usually paid for the same; have forthwith granted unto him a Writ of* Habeas Corpus, *to be directed generally*

generally unto all and every Sheriff, Goaler, Miniſter, Officer, or other Perſon, in whoſe Cuſtody the Perſon Committed or Reſtrained ſhall be. (4) *And the Sheriffs, Goaler, Miniſter, Officer, or other Perſon, in whoſe Cuſtody the Perſon ſo Committed or Reſtrained ſhall be, ſhall, at the Return of the ſaid Writ, and according to the command thereof, upon due and convenient notice thereof given unto him, at the Charge of the Party who requireth or procureth ſuch Writ, and upon Security by his own Bond given, to pay the Charge of carrying back the Priſoner, if he ſhall be remanded by the Court to which he ſhall be brought; as in like caſes hath been uſed, ſuch Charges of bringing up, and carrying back the Priſoner, to be always Ordered by the Court, if any difference ſhall ariſe thereabout, bring, or cauſe to be brought, the Body of the ſaid Party ſo Committed or Reſtrained unto, and before the Judges or Juſtices of the ſaid Court, from whence the ſame Writ ſhall Iſſue, in open Court.* (5) *And ſhall then likewiſe certifie the true Cauſe of ſuch his Detainour or Impriſonment, and thereupon the Court; within three Court-days after ſuch Return, made and delivered in open Court, ſhall proceed to Examine and Determine, whether the Cauſe of ſuch Commitment appearing upon the ſaid Return, be Juſt and Legal, or not, and ſhall thereupon do what to Juſtice ſhall appertain, either by Delivering, Bailing, or Remanding the Priſoner.* (6) *And if any thing ſhall be otherwiſe wilfully done, or omitted to be done by any Judge, Juſtice, Officer, or other Perſon aforementioned, contrary to the Direction and true Meaning hereof, then ſuch Perſon ſo offending, ſhall forfeit to the Party grieved, his treble Damages, to be recovered by ſuch means, and in ſuch manner, as is formerly in this Act limited and appointed, for the like Penalty to be Sued for and Recovered.*

9. *Provided always, and be it Enacted, That this Act, and the ſeveral Clauſes therein contained, ſhall be taken and Expounded to Extend only to the* Court of Star-Chamber. (2) *And to the ſaid Courts holden before the Preſident and Council in the Marches of* Wales. (3) *And before the Preſident and Council in the Northern parts.* (4) *And alſo to the Court commonly called the Court of the Dutchy of* Lancaſter,

Lancaſter, *holden before the Chancellor and Council of that Court.* (5) *And alſo in the Court of Exchequer, of the County Palatine of* Cheſter, *held before the Chamberlain, and Council of that Court.* (6) *And to all Courts of like Juriſdiction to be hereafter Erected, Ordained, Conſtituted, or Appointed as aforeſaid; and to the Warrants and Directions of the Council-board, and to the Commitments, Reſtraints and Impriſonments of any Perſon or Perſons made, commanded or awarded by the King's Majeſty, His Heirs or Succeſſors in their own Perſon, or by the Lords and others of the Privy-Council, and every one of them.*

And laſtly, Provided and be it Enacted, That no Perſon or Perſons ſhall be Sued, Impleaded, Moleſted or Troubled, for any Offence againſt this preſent Act, unleſs the Party ſuppoſed to have ſo Offended, ſhall be Sued or Impleaded for the ſame, within two years, at the moſt, after ſuch time, wherein the ſaid Offence ſhall be committed.

The Comment.

THE Court of *Star-Chamber* (ſo called, becauſe held in a Chamber at *Weſtminſter*, the Roof of which is garniſh'd with Golden *Stars*) was not originally Erected, but confirmed and eſtabliſhed by the Statute of 3 *H.* 7. cap. 1. For there had before been ſome ſuch Juriſdiction, as *Coke* obſerves 4 *Inſtit.* Fol. 62. yet there is reaſon to believe, that it grew up rather by Connivance and Uſurpation, than any due courſe of Law. The Crimes it pretended to puniſh, were the Exorbitant Offences of Great Men, (whom Inferior Judges and Jurors (though they ſhould not) would in reſpect of their Greatneſs, be afraid to offend) Bribery, Extortion, Maintenance, Champerty, Imbracery, Forgery, Perjury, Libelling, Challenges, Duels, &c. Their Proceedings were by Engliſh Bill, and Proceſs under the Great Seal; and the Puniſhments by them Inflicted, were *Fines, Impriſonment, Pillory, Cutting off Ears*, &c. But whatever Pretences there were, for the ſetting up this Court at firſt, 'tis certain

certain it was made uſe of as a Property of Arbitrary Power, to Cruſh any whom the Ruling Miniſters and Favourites had a mind to deſtroy; and indeed there were Three things in the very nature of this Court, which were deſtructive to the Original Conſtitution of our Engliſh Government and Liberties. 1. They proceeded with *Juries*. 2. They pretended to a Power to Examine Men upon their *Oaths*, touching Crimes by them ſuppoſed to be committed, which is contrary to all Law and Reaſon; For, *Nemo tenetur ſeipſum Accuſare*: No Man is bound to accuſe himſelf. 3. The Judges of this Court proceeded by no known Law or Rules, but were left at Liberty to Act Arbitrarily, and according to their own Pleaſures; whereas the Law of *England* hates to leave to any ſuch, an unlimited Power, but as it marks out the ſeveral ſpecies of Crimes, ſuch or ſuch an Act ſhall be Treaſon, this Felony, that Petty-Larceny, *&c.* So it awards certain and poſitive Puniſhment, proportionate to each of them. Therefore this Court being found a Grievance to the Subject, was by this Act diſſolved and taken away.

And to the intent nothing of the like kind, ſhould, by any other name, be practiſed for the future, it is declared and Enacted, That the King and his Privy-Council, ſhall not queſtion or diſpoſe of the Lands or Goods of any Subjects: And if they do, each Privy-Counſellor preſent, forfeits 500 *l.* to the Party grieved.

A Clauſe in the Act of 31 *Car.* 2. Cap. 1.

WHereas by the Laws and Cuſtoms of this Realm, the Inhabitants thereof cannot be compelled, againſt their Wills, to receive Souldiers into their Houſes, and to ſojourn them there, Be it Declared and Enacted by the Authority aforeſaid, That no Officer, Military or Civil, nor any other Perſon whatſoever, ſhall from henceforth preſume to Place, Quarter or Billet, any Souldier or Souldiers, upon any Subject or Inhabitant of this Realm, of any Degree, Quality or Profeſſion

Profeſſion whatever, without his conſent: And that it ſhall and may be lawful, for every ſuch Subject and Inhabitant, to refuſe to Sojourn or Quarter any Souldier or Souldiers, notwithſtanding any Command, Order, Warrant, or Billeting whatſoever.

Having thus Collected together divers of the moſt remarkable and advantagious of our Laws, whereby the Liberties of Engliſh-men are guarded and ſecured; ſince the beſt of Laws are but inſignificant Cyphers, if not Honeſtly put in Execution; and ſince, in the Execution of our Laws, *JURIES* are mainly concern'd, who, if Ignorant of their Duty, or Corrupt, or Over-aw'd, and not daring to make uſe of that juſt Power, wherewith the Law hath inveſted and intruſted them, may give up all thoſe precious Priviledges, and ſubject us to the worſt kind of Slavery, under pretence of Law: Therefore here in the laſt place, for the Information of my Honeſt Country-men, the Free-holders of *England*, and others, who in Corporations are daily call'd to this important Service, I ſhall ſubjoyn a brief Diſcourſe of *JURIES*.

SECT. I.

Of the Advantage Engliſh-men enjoy by this Trial by Juries, above any other Nations under Heaven.

IT is one of the miſerable Follies of Depraved Humane Nature, that it commonly ſlights preſent Enjoyments, and rarely rates the good things it poſſeſſes at their true value, till 'tis deprived of them. This grand Priviledge of *Trials per pais*, by our Country, that is, by *JURIES*, as it ſeems to have been as Ancient as the Government, or firſt Form of Policy in this Iſland; for it was not unknown to the ancient

Brittains

Brittains (as appears by their Books and Monuments of Antiquity) practised by the Saxons, (See King Ethelred's Laws in Lambert, p. 218. and Cok. 1 Part Instit. Fol. 155.) and confirmed since the Invasion of the Normans, by Magna Charta, as you have heard, and continual Usage. (6) It is a thing of the highest Moment, and an essential Felicity to all English Subjects. For look abroad in France, Spain, Italy, or indeed, (almost) where you will, and observe the miserable Condition of the Inhabitants, either intirely Subjected to the Arbitrary Lusts of Tyrants, who Plunder, Dismember or Slay them, according as the Humour takes them, and many times without the least Provocation, meerly for Sport, and to gratifie a Savage Cruelty: Or at best, you will behold them under such Laws, as render their Lives, Liberties and Estates, liable to be disposed of, at the Discretion of Strangers appointed their Judges, most times Mercenary, and Creatures of Prerogative; sometimes Malicious and Oppressive, and too often Partial and Corrupt. Or suppose them never so Just and Upright, yet still has the Subject no Security against Subornations, and the Attacks of malicious, false and unconscionable Witnesses; yea, when there is no sufficient Evidence, upon meer Suspicions, they are obnoxious to the Tortures of the Rack, which often make an Innocent Man confess himself Guilty, meerly to get out of present Pain: Or if he do, with invincible Courage, indure the Question (as they call those Torments) he is many times so spoiled in his Limbs, as he scarce ever is his own Man again.

Whereas such has been the Goodness of God, and the prudent Care of our Ancestors, that, to our inestimable Happiness, we are born, and live, under a mild and Righteous Constitution, where all these Mischiefs may be prevented; where none can be Legally condemned, either by the Power of Superior Enemies, or the Rashness or ill Will of any Judge, nor by the bold Affirmations of profligate Evidence: For by a

Fundamental Law in our Government, No Man's Life (unless it be in Parliament, which is a Supream Court, and 'tis supposed will never do any Man wrong) shall be touched for any Crime whatsoever, but upon being found Guilty on two several Trials (for so may that of the Grand and Petty Jury be called) and the Judgment of twelve Men at least, all of his own Condition and Neighbourhood, and upon their Oaths, [Coke 3 Part of *Instit.* p. 30.] That is to say, *Twelve* or more to find the Bill of Indictment against him, and Twelve others to give Judgment upon the General Issue of *Not Guilty*: All which Jurors must be honest, substantial, Impartial Men, and being Neighbours of the Party accused, or place where the supposed Fact was committed, cannot be presumed to be unacquainted either with the Matters charged, the Prisoners course of Life, or the Credit of the Evidence: And all these must first be fully satisfied in their Consciences, that he is Guilty, and so unanimously pronounce him upon their Oaths, or else he cannot be condemned. For the Office and Power of these Juries is *Judicial*: They only are the Judges, from whose Sentence the Indicted are to expect Life or Death; upon their Integrity and Understanding, the Lives of all that are brought into Judgment, do ultimately depend; From their Verdict there lies no *Appeal*: By finding Guilty or Not Guilty, they do complicately resolve both Law and Fact.

Judges are made by Prerogative, and many times heretofore they have been preferred by Corrupt Ministers of State, and may be so again in Time to come; and such advanced as would serve a present Turn, not always those of the most Integrity and Skill in the Laws: Their Places are so Honourable and Profitable and their Tenure so Ticklish, *viz. durante beneplacito*, meerly during Pleasure, that they lie under no small Temptations, which perhaps, with some, may be nevertheless unlikely to prevail; for their having generally been wont before to take Fees, they are concern'd

concern'd in so many Causes, that they are the oftener subject to be Tempted, and are so few that they may be the easier Corrupted: They cannot be challenged, and may be apt to think themselves above any Action, and thence be encouraged to strain a Point now and then. The major part of them agreeing, is enough; they are never Sworn at each particular Trial, nor ever at all but once, and that exceeding Generally. I say, all these things may possibly happen to Biase some Judges, (for I intend not the least Reflection hereby on any of those Honourable Persons, who now Deservedly sit upon our Seats of Justice) But nothing of that kind can reasonably happen to a Jury. For, 1. They are return'd by a Sworn Officer. 2. Must be Men of a clear Reputation, and competent Estate. 3. Being Neighbours, they may know something of the Business on their own Knowledge. 4. Their Office is but a trouble, not accompanied with any great Honour, nor any Profit at all. 5. They are all solemnly Sworn to each particular Cause. 6. The party may challenge 35 in case of Treason, and 20 of them in Felony, without shewing any cause, and as many more as he can assign Cause against. 7. Of the Grand Jury, Twelve at least must joyn in the Verdict, and of the Petty Jury every man of the Twelve must consent upon his [illegible] or else 'tis all nothing. And lastly, if they [illegible] Verdict between Party and Party, they [illegible] to an *Attaint*. [But I do not find any Attaint lies in Criminal causes, where the King is a party.]

Now, let any Man of Sense consider, whether this method be not more proper for *bolting* out the Truth, for finding out the *Guilty*, and preserving the *Innocent*, than if the whole Decision where left to the Examination, of two or three, whose *Interest*, *Passion*, *Haste*, or *Multiplicity* of Business may easily betray them into Error.

Deservedly therefore is this Tryal by *Juries* rank'd amongst the choicest of our Fundamental Laws, which

whosoever shall go about openly to *Suppress*, or craftily to *Undermine*, and render only a Formality, does *Ipso Facto* attack the Government, and brings in an Arbitrary Power, and is an Enemy and Traitor to his King and Countrey; for which reason *English* Parliaments have all along been most Zealous for preserving this great Jewel of Liberty, Tryals by Juries, having no less than 58 several times since the *Norman* Conquest, been Established and Confirmed by the Legislative Power, no one Priviledge besides having been near so often remembred in Parliament.

SECT. II.

Whose Persons ought to be Jury-Men, and how Qualified.

AS the Office of Juries is of such great Importance, so the Wisdom of our Law has provided that the same shall be Supplyed with Persons of Ability, Honesty, Integrity, and Indifferency; for, (as my Ld *Coke* saith, 1 Part *Instit.* Sect. 234. Fol. 155.) He that is of a Jury must be *Liber Homo*, [illegible] is, not only a *Free Man*, and not Bond, but also [illegible] hath such *Freedom of Mind*, as he stands Ind[illegible] as he stands Unsworn. 2. He must be *Legal*[illegible] by the Law every Juror that is returned for the Tryal of any Issue or Cause, ought to have Three Properties. 1. He ought to be Dwelling most *near* to the place where the Question is moved. 2. He ought to be most Sufficient, both for Understanding, and competency of Estate. 3. He ought to be least Suspicious, that is, to be Indifferent as he stands Unsworn; but a Man's being ExcomNunicated (as was said before) is no Bar to his being a Juryman, much less his being a Dissenter, or Non-frepuenter of Church Ceremonies, if he be otherwise

wise qualified with Estate and Understanding; for at that rate, if Popery should ever get uppermost, No Protestant at all would be capable of being a Jury man, because a Nonconformist to Holy Church. Now I no Statute excludes Protestants unconvicted of any Crime, or Dissenters (*qua tales*) to serve on Juries, I should think we ought to wait at least till an Act of Parliament be made to that purpose, before we deny them *Liberam Legem*; and to act otherwise, in my silly Opinion, seems not only Unwarrantable, but a dating Usurpation of Legislative Power: In a word, Jurors must be Free of and from all manner of Bondage, Obligations, Affections, Relations and Prejudices; they must be the Peers or Equals of the Party they are to Try; they must be of full Age, 21 Years Old, or upwards, not *Outlaw'd*, never *Attainted* nor *Convicted* of Treason, Felony, false Verdict, Perjury, or adjudged Infamous; they were Antiently all Knights, as we read in *Glanvil* and *Bracton*, and they must still be Persons of Worth and Repute; and as they are returned by a Sworn Officer, the Sheriff, so they of the Petty Jury must be every one Sworn every several Tryal by a particular Oath, the more to remind them of their Duty. Nay, it should seem in antient times, though the Office and Duty were still the same as at this Day, yet their Honour and Dignity were much greater: The *Mirror of Justices*, makes no Scruple to call 'em *Judges*; and Dr. *Cowel* in his Interpreter tells us, Juries *were antiently Associates and Assistants to the Judges of the Court in a kind of Equality*, whereas now a-days they attend them in great Humility: And cites the Customary of *Normandy*, and *Lambert*, as being of the same Sentiments. But I desire not to bring in Innovations, only that *Englishmen* may preserve their antient Rights and Priviledges, inform themselves of their Duty and Office by Law, that so they may uprightly Discharge the same to GOD and the King, and their Fellow-Subjects.

SECT. III.

Of Grand Juries, their Duty, and the great Importance of their Office.

JUries are of two ſorts: 1. The *Grand Jury*, ſo called, both becauſe it conſiſts of a greater number than *Twelve*, as commonly 21, 19, 17, or the like, [but note, they can make no Verdict or Preſentment, unleſs Twelve, at leaſt, of them agree, and then what they do is Valid, though the reſt do not conſent;] as alſo becauſe generally they are of the greater Quality, and likewiſe in reſpect of their Power, becauſe the extent of their Office is more great and general, as extending to all Offences throughout the whole County for which they ſerve. 2. The *Petty Jury* (in Caſes Criminal called commonly the *Jury of Life and Death*) which always conſiſts of Twelve Men, neither more nor leſs, who muſt every Man agree, or elſe it is no Verdict.

The Oath of a Grand Jury-man, as I find it inſerted in the Collection, Intituled, *The Book of Oaths*, p. 215. is as follows.

YE ſhall truly inquire, and due Preſentment make, of all ſuch things as you are charged withal on the King's behalf: The King's Counſel, your own, and your Fellows, you ſhall well and truly keep, and in all other things the Truth preſent: So help you God, and by the Contents of this Book.

But according to Modern Practice, and as we find it Publiſhed in the Account of the Proceedings againſt the Right Honourable the Earl of *Shaftsbury*, laid to be Publiſh'd by His Majeſty's ſpecial Command, is expreſſed ſomewhat more largely.

The

The Oath Administred to the Grand Jury, as follows.

YOU shall diligently Inquire, and true Presentment make, of all such Matters, Articles, and things as shall be given you in charge, as of all other matters and things as shall come to your knowledge touching this present Service, the King's Counsel, your Fellows and your own, you shall have leave. You shall present no Person for Hatred or Malice, neither shall you leave any one unpresented for Fear, Favour or Affection, for Love or Gain, or any hope thereof, but in all things you shall present the Truth, the whole Truth, and nothing but the Truth, to the best of your knowledge. So help you God.

The Office of a Grand Jury, or *Grand Inquest*, (for by both those Names it promiscuously called) is principally concern'd in two things, *Presentments* and *Indictments*, the difference of which is thus: The first is, when the Jury themselves, of their own Knowledge or Inquiry, do take notice of some Crime, Offence or Nuisance, to the Injury of the Publick, which they think fit should be punished or removed; and in order thereunto do give the Court notice thereof in Writing briefly and plainly Form only the Nature of the thing, and the Person's Name, and the Place. And this is call'd a *Presentment*, being the matter whereon to form an Indictment, from which the Presentment differs in these two respects. 1. In that it is always Originally the Act of the Grand Jury. And 2. That it is not yet drawn up in Form; whereas Indictments are commonly drawn up either by the Order of the Court, or at the Instance of some Prosecutor, and are brought before, and delivered into the Grand Jury, and the Witnesses sworn attend them, who examining the said Witnesses, and as they think fit, Return the Indictments Indorsed, either *Billa Vera*, that is, a true Bill; or *Ignoramus*, *We find not*, that is, we do not

not find the Matter, or there does not appear to us such sufficient Grounds for the Accusation, that the Persons Life and Reputation should be brought into question.

From whence it appears, that the end of their Office is likewise two-fold. 1. To inquire after, and give notice of all Crimes, Offences, Nusances, &c. in the County for which they Serve, which by reason of their Inhabitancy and Estates therein, they are presumed to have best opportunity to discover, and to find Bills against Malefactors, where there are good Grounds for the same, that so they may be brought to Trial if they are forth-coming, or may be proceeded against to the Outlawry, if they are fled for their said Offences. 2. To preserve the Innocent from the Disgrace and Hazards which ill Men may design to bring them to, out of Malice, or through Subornation, or other sinister ends; for so tender is the Law, of the Reputation and Life of a Man, that it will not suffer the one to be sullied, by the Parties holding up the Hand at the Bar, and the other indangered by a Trial, until full the Matter and Evidence against him have been scann'd, examined, and found by a Grand Jury, upon their Oaths, against him. Therefore you see by their Oaths, They are Sworn not only to Inquire, but Diligently to Inquire, not to be Negligent or Slothful not to take things upon trust, or hurry them over carelesly, but to weigh the Circumstances, and the Witnesses, and search out the Truth of such Informations as come before them, and to reject the Indictment, if it be not sufficiently proved; and if they have reasonable Suspicion of Malice, Subornation, or wicked Designs against any Man's Life or Estate, in such as offer or come to Swear to the Bill of Indictment, they are bound by Law, as well as in Conscience, to use all diligence to discover the Villany; and if it appear to them (whereof they are the Legal Judges) to be a Conspiracy, or malicious Contrivance against the Accused, they are bound,

bound, not only to reject such Bill of Indictment, but forthwith to Indict all the Conspirators, with their Associates and Abettors: And that this is a main part of the Grand Juries Office, appears not only from Legal Reason, but by an express Statute, *viz.* 25 *Edw.* 3. 4. and 42 *Edw.* 3. 3. which says, *That for preventing Mischiefs done by* FALSE ACCUSERS, *none shall be put to answer, unless it be by Indictment, or Presentment of good and Lawful People of the same Neighbourhood where such deeds be done*; that is to say, by a Grand Jury.

The Grounds upon which Grand Juries are to proceed in giving their Verdicts, are either,

1. From their own Knowledge, and so they may find an Indictment against a Person, though there be never a Witness at all to it, and a Petty Jury may in like manner find a Person Guilty of a Felony or Murder whereof he stands indicted, though no Witnesses appear against him to prove it; and the reason thereof is, because the Juries being always of the *Visinage*, the Law supposes they may know the matter of their own knowledge, and therefore in all such Cases, when a Jury is charged with a Prisoner, and after the Indictment read, Witnesses fail to appear, the Court always speaks thus to the Jury: *Gentlemen, here is A. B. stands Indicted of a Crime, but here's no Witnesses come against him, so that unless, on your own knowledge, you know him Guilty, you must Acquit him*: And certainly, if the Juries knowledge of a Man's Guilt, is enough to Condemn him, I see not why their personal knowledge of a Prisoner's Innocency, or of the Witnesses Swearing falsely, should not be sufficient to Acquit him.

2. The other ground upon which the Grand Juries are to proceed, is *Testimony of Witnesses*, and this is called EVIDENCE, because it ought to be such as may make the matter clear, manifest, plain and evident to the Jury; and of this Evidence, the Jury are the proper and only Judges, therefore they ought (according

cording to their Oath) diligently Inquire into the Quality, Repute, and Circumstances of the Witnesses, the likelihood of what they Depose, and whether they do not Swear out of Malice, Subornation, Self-interest, Combination, or some ill Design; which to discover, they will do well to examine them a-part, to note their Variations and Contradictions, to ask them sudden Questions, and what Questions are pertinent, not the Judges, but the Jury only, can determine; for they may know how to make use of them towards Discovery of the Truth, though the Judge do not, and 'tis They are upon their Oaths, not he; 'tis They must satisfie their own Consciences, the Judge has nothing to do to Intermeddle, he is bound by their Verdict: Let Witnesses be never so rampantly positive, yet if the Jurors have good and reasonable grounds, not to believe them, they will, they must, remain as Ignorant to the Parties Crime as before: We find this expresly asserted for Law in our Books, as *Stiles's* Reports, *Lib.* 11. though there be Witnesses who prove the Bill, yet the Grand Inquest is not bound to find it, if they see cause to the contrary, so *Coke* Lib. 6. The *Judges* use to determine who shall be Sworn, and what shall be produced as Evidence to the Jury; but the Jury are to consider what Credit or Authority the same is worthy of. If a Grand Jury are not Judges of Evidence, they signifie nothing. If (as some would perswade us) because People Swear desperately, though they do not believe them, they shall be bound to find the Bill, then they signifie nothing, and are no Security to preserve Innocency. A lewd Woman once resolved to Indict the then Archbishop of *Canterbury* for a Rape, she Swore it, no doubt, very heartily, according to this new Doctrine of going according to Evidence, the Jury must presently have found the Bill, the Archbishop must have been Committed to Prison, Suspended from Ecclesiastical Jurisdiction, his Goods and Chattels throughout *England* Inventoried by the Sheriffs; would it, think

you,

you, in that Case, have been a good Excuse for the Grand Jury, to have said, that though they believed in their Conscience the Baggage Swore false, yet she Swearing it positively, they, as so many Parish-Clerks, were but to say *Amen* to her Oath of the Fact, and to find *Billa Vera* against that eminent Prelate? And if the Jury be Judges of the Credibility of Evidence in this Case, and may go contrary to it, Why, I pray, may they not have the same Liberty where they find good Cause in others?

If an Indictment be said against a Man for Criminal words, said to be uttered in a Colloquium, or Discourse, though the Witnesses roundly Swear all the express words in the Indictment, yet unless they will relate and set forth the Substance of the whole Talk, 'tis impossible the Jury should judge of the matter; for the foregoing and subsequent words, may render Expressions that are Innocent and Loyal, which taken to halfs, may be rank Treason; as if one should say, *To affirm the King has no more Right to the Crown of England than I have, (which is the Opinion of the Jesuits, of His Majesty, if once Excommunicated by the Pope) is detestable Treason.* And two Men at some distance, not well Hearing, or Remembring, or Maliciously designing against his Life, should Swear—That he said, *The King had no more right to the Crown than he had.* Now that the Man did utter these very words is true; but if you ask the Evidence the rest of the Colloquium, they shall tell you there was much more Discourse, but they cannot remember it; what satisfaction is this to a Jury? Or would it not be hard, for a Man to be put to hold up his Hand at the Bar, under the frightful Charge of Treason in this case? Or if a Minister, in his Sermon, should recite that of the Psalm, *The Fool hath said in his Heart There is no God:* Jesuited Evidence may now come and charge him with Blasphemy, and Swear that he said, *There was no God.* And ask them what Expressions besides he used, may excuse themselves, and say, 'tis a Great While

ago,

ago, we cannot remember a whole Sermon, but this we also positively Swear, *He said there was no God.*

The Inquiry of a Grand Jury should be suitable to their Title, a *Grand Inquiry*; else instead of serving their Country, and presenting real Crimes, they may Oppress the Innocent, as in the Case of *Samuel Wright* and *John Good*, at a Sessions in the *Old-Baily*, about *December* 1681. *Good* Indicts *Wright* for Treasonable words, and Swore the words positively; but after a Grand Inquiry, the Grand Jury found that *Wright* only spoke the words as of others, thus, *They say so and so*—and concluded with this—*They are Rogues for saying it*; and also *Good* at last confessed that *Wright* was his *Master*, and corrected him for Misdemeanors; and then to be Reveng'd, he comes and Swears against him, which he confessed he was instigated to by one *Powel*; so the Grand Jury finding it to be but Malice, return'd the Bill *Ignoramus*; whereas, if they had not examin'd him strictly, they had never discover'd the Intrigue, and the Master had causelessly been brought to great Charge, Ignominy and Hazard.

The Judicious *Dalton*, p. 539. says well, *No less Care or Concern at all, lies on the Grand Jury, than does on the Petty Jury.* People may tell you, *That you ought to find a Bill upon any probable Evidence, for 'tis but matter of Course, a Ceremony, a Business of Form, only an Accusation, the Party is to come before another Jury, and there may make his Defence.* But if this were all, to what purpose have we Grand Juries at all? Why are the wisest, best Men in the County (for such they are, or should be) troubled? Why are they so strictly Sworn? Do not Flatter your selves, you of the Grand Jury are as much upon your Oaths, as the Petty Jury; and the Life of the Man, against whom the Bill is brought, is in your Hands. The Lord *Coke* 3 *Inst.* 33. plainly calls the Grand Jury-men all wilfully Forsworn, and Perjured, if they wrongfully find an Indictment; and if in such a case the other Jury, through Ignorance &c. should find the Person Guilty too, you are Guilty of

his

Blood as well as they: But suppose he get off there, do you think it nothing to Accuse a Man upon your Oaths, of horrid Crimes, your very doing of which, puts him, though never so Innocent, to Disgrace, Trouble, Damage, danger of Life, and makes him liable to Outlawry, Imprisonment, and every thing but Death it self, and that too, for ought you know, may wrongfully be occasion'd by it, your Oath Verdict gaining Credit, and giving Authority to another Jury to find him Guilty? For if the Petty Jury find a Man guilty never so unjustly, the Law suffers no Attaint, or other Punishment, to be against them, for this very reason, because another Jury, *viz.* the Grand Inquest, as well as they, have found him guilty. If a Grand Jury find a Bill wrongfully against a Person, and it prove never so much to his Damage, he has no Remedy; for being upon their Oaths, the Law will not suppose any Malice. One of the Grand Jury cannot afterwards be of the Petty Jury, and why? Because, says the Law, he has once already found the Party Guilty, and if he should not again, he must Perjure himself. From all which it appears, what a weight and stress the Law puts upon the Verdict of a Grand Jury; and 'tis remarkable too, that the Law directs them only to say, either *Billa Vera*, *It is true*; or, *Ignoramus*, *We know not*; and never, *That it is not true*: Which shews, that if they be doubtful, or not fully satisfied, the Indictment must be indorsed not *Billa Vera*, We know 'tis true; but *Ignoramus*, We doubt it, We do not know it, We are not certain it is true. If they find a Bill where they ought not, they wound their own Consciences, and do an irreparable Damage to the Party; but where they do not find the Bill, there is no harm done to any body, for another Indictment may be brought, when there is better Evidence.

CHAP.

CHAP. LIII.

The Power of Judges of Law, in some respects, & Bail & Fine.

A Moral to her Decrees, to determine the Rights of Persons and Properties, according to Truth and Justice, the one proper and adequate End of Government, there are only Persons of Fact, and Persons of Law, to be considered: For Example, if a Person be indicted for a Fact, which makes it no Crime, if the Jury find the Fact, and leave it to the Court to judge whether it be Treason, Felony, or no Crime, although the said several Circumstances do not appear, they shall be directed by the Court what they are to find to make it Treason, Felony, or no Crime; they are not to take upon them the Knowledge of the Law, but must leave it to the Court to judge of the Fact found by the Jury, whether it be Murder or no, or Manslaughter, or Self-defence, or Misadventure, or Casualty, or no Felony. And if the Jury find the Fact specially, they must find all the Circumstances of the Fact, and not take upon them the Knowledge of the Law in the Case, but

Peace, or Felony, though it be matter in Law, whether the Party be a Trespasser, a Breaker of the Peace, or a Felon, yet the Jury do not find the Fact of the Case by it self, leaving the Law to the Court, but find the Party Guilty or not Guilty generally; so that though they answer not to the Question singly, what is Law, yet they determine the Law in all matters where Issue is joyned. Is it not every days Practice, when Persons are Indicted for Murder, the Jury does not only find them Guilty or not Guilty, but many times, upon hearing and weighing of Circumstances, brings them in either Guilty of the Murder, or else only of Man-slaughter, *per misadventure*, or *se defendendo*, as they see cause? Besides, as Juries have ever been vested with such Power by Law, so to exclude from or Disseize them of the same, were utterly to Defeat the End of their Institution. For then if a Person should be Indicted for doing any common innocent Act, if it be but cloathed and disguised in the Indictment with the name of Treason, or some other High Crime, and proved by Witnesses to have been done by him, the Jury, though satisfied in Conscience, that the Fact is not any such Offence, as 'tis called, yet because (according to this fond Opinion) they have no Power to judge of Law, and the Fact charged is fully proved, they should at this Rate be bound to find him Guilty: And being so found, the Judge may pronounce Sentence against him, for he finds him a Convicted Traytor, &c. by his Peers: And so Juries should be made meer Properties to do the Drudgery, and bear the blame of unreasonable Prosecutions. But all this is absurd, and abhorr'd by the Wisdom, Justice and Mercy of our Laws.

In every Indictment, Information, &c. there are certain words of Course, called matter of Form, as *Maliciously, Seditiously, with such and such an Intention &c.* And these sometimes are raised by a just and reasonable Implication in Law, and sometimes are thrust in meerly to raise a Pretence or Colour of Crime, where there

there is really none. So that every Jury-man ought well to understand this Distinction; where the Act or matter of Fact charged, is in it self a Crime of Offence against Law; as killing of a Man, Levying of War against the King, &c. there the Law does in pleading require, and will supply those words; and if the Jury do find, and are satisfied, That the substance of the Charge is such a Crime, and the Person Guilty thereof, they are bound to find it, though no direct Proof be made of those Circumstantials. But where the Act or matter of *Fact*, is in it self Innocent or Indifferent, there the Purport of these words (as that it was done *Maliciously*, or with *such* or *such a design*) is necessary to be proved: For else there is no Crime, and consequently no fit matter to be put to Trial. In which case, the Grand Jury is bound in Conscience and Law to return an *Ignoramus*, and a Petty Jury *Not Guilty*.

SECT. V.

That Juries are not Finable, or any way to be punish'd, under Pretence of going contrary to Evidence, or against the Judges Directions.

MUch of what we have said of Grand Juries, is also applicable to Petty Juries, so that we need not repeat it, only must answer one Objection. Some Jury-men may be apt to say, —If we do not find according to Evidence, though we have reason to suspect the truth of what they Swear, or if we do not find as the Judge directs, we may come into trouble, the Judge may Fine us, &c.—I answer, This is a vain fear: No Judge dare offer any such thing; You are the proper Judges of the Matters before you, and your Oaths are at stake, you ought to Act freely, and are not bound, though the Court demand it, to

give

give the Reasons why you bring it in thus, or thus, for you of the Grand Jury are Sworn to the contrary, viz. *To keep secret your Fellows Counsel and your own*: And you of the Petty Jury are no way obliged to declare your Motives, it may not be convenient. 'Twas a notable Case before the Chief Justice *Anderson* in Queen *Elizabeth* days: A Man was Arraigned for Murder, the Evidence was so strong, that eleven of the Jury were presently for finding him Guilty, the twelfth Man refused, and kept them so long, that they were ready to starve, and at last made them comply with him, and bring in the Prisoner not Guilty. The Judge, who had several times admonish'd this Jury-man to joyn with his Fellows, being surprized, sent for him, discoursed him privately; to whom, upon promise of Indempnity, he at last own'd, that he himself was the Man that did the Murder, and the Prisoner was Innocent, and that he was resolv'd, not to add Perjury, and a second Murder to the first.—But to satisfie you, that a Jury is no way punishable for going according to their Conscience, though against seeming Evidence, and the Reasons why they are, and ought not to be question'd for the same, I shall here recite an Adjudged Case, that of *Bushel*, in the two and twentieth Year of King *Charles* II. Reported by the Learned Sir *John Vaughan*, whose Book was Licensed by the then Lord Chancellor, the Lord Chief Justice *North*, and all the Judges then in *England*: The said Case begins Fol. 255. and continues 150, the whole well worth Reading, but I shall only select certain Passages.

The Case was this.

BUshel, and others of a Jury, hiring, on a Sessions, one found Pen and Mead (two Quakers) Guilty of a Trespass, Contempt, Unlawful Assembly and Tumult, whereof they had been Indicted, were Fined Forty Pound a Man, and Committed till they should pay it. Bushel brings his Habeas Corpus, and upon the Return it appeared he was Committed,—For that contrary to Law, and against full and clear Evidence openly given in Court, and against the Directions of the Court

in

[illegible] matter of Law, they had Acquitted the said W. P. and W. M. to the great Obstruction of Justice, &c. Which upon solemn Argument [illegible] by the Judges [illegible] to be an Insufficient Cause of Fining and Committing them, and they were discharged and afterwards brought Actions for their Damage. The Reasons of which Judgment are reported by Judge [illegible] and amongst them he [illegible] that follow, which I shall give you in his own words.

Fol. 140. [illegible] in the Reason [illegible] said to have Acquitted the Persons Indicted, [illegible] Evidence, Corruption, and Knowing that the Evidence to be full and manifest against the Persons Indicted; [illegible] Fine and Imprisonment. In

In the Margent of that Fol. 142. it is thus noted: *Of this Mind were ten Judges of eleven; the Chief Baron Turner gave no Opinion, because not at the Argument.*

And in the same Fol. 142. he saith, *The Verdict of a Jury, and Evidence of a Witness, are very Different things, in the Truth and Falshood of them: A Witness Swears but to what he hath heard or seen generally, or more largely, to what hath fallen under his Senses: But a Jury-man Swears to what he can Inferr and conclude from the Testimony of such Witnesses, by the Act and force of his Understanding, to be the Fact inquired after; which differs nothing in Reason, though much in the Punishment, from what a Judge, out of various Cases considered by him, infers to be the Law in the question before him.*

If the meaning of these words, finding against the Direction of the Court, *in matter of Law, be, That if the* Judge, *having heard the Evidence given in Court (for he knows no other) shall tell the Jury, upon this Evidence, the Law is for the Plaintiff, or for the Defendant, and you are under the Pain of Fine and Imprisonment to find accordingly, and the Jury ought of duty so to do; then every Man sees, that the Jury is but a troublesome delay, great Charge, and no use in determining Right and Wrong; and therefore the Tryals by them may be better abolished than continued: Which were a strange new-found Conclusion, after a Tryal so Celebrated for many hundred Years.*

It is true, if the Jury were to have no other Evidence for the Fact, but what is Deposed in Court, the Judge might know their Evidence, and the Fact from it, equally as they, and so direct what the Law were in the Case; enough even then, the Judge and Jury might honestly differ in the Result from the Evidence, as well as two Judges may, which often happens; but the Evidence which the Jury have of the Fact, is much otherwise than that. For,

1. Being Returned of the Vicinage where the Cause of Action ariseth, the Law supposeth them thence to have sufficient Knowledge to Try the matter in Issue (and so they must) though no Evidence were given on either side in Court; but to this Evidence the Judge is a stranger.

2. They

2. They may have Evidence from their own Personal Knowledge, by which they may be assured, and sometimes are, that what is deposed in Court is absolutely false; but to this the Judge is a Stranger, and he knows no more of the Fact than he hath learned in Court, and perhaps by false Depositions, and consequently knows nothing.

3. The Jury may know the Witnesses to be Stigmatized and Infamous, which may be unknown to the Parties, and consequently to the Court.

Fol. 148. To what end is the Jury to be Returned out of the Vicinage where the Cause of Action ariseth? To what end must Householders be of the Jury, whom the Law supposeth to have greater knowledge of the Fact, than those of the Vicinage in general? To what end are they challenged so scrupulously to the Array and Poll? To what end must they have such a certain Freehold, and be Probi & Legales hominess and not of Affinity with the Party concerned? To what end must they have, in many Cases, the View, for Exacter Information thereof? To what end must they undergo the Examination of the Witnesses Face to Face, if, after all this, they implicitely must give a Verdict by the Dictates and Authority of another Man, under Pain of Fines and Imprisonment, when sworn to do so according to the best of their own Knowledge?

A Man cannot see by another's Eye, nor hear by another's Ear; no more can a Man conclude or infer the thing to be proved by another's Understanding or Reasoning; and though the Verdict be right the Jury gives, yet they being not assured that it is so from their own Understanding, are Forsworn, at least in foro Conscientiæ.

Fol. 149. And 'tis Absurd to Fine a Jury for finding against their Evidence, when the Judge knows but part of it; for the latter and greater part of the Evidence may be wholly unknown to him, and this may happen in most Cases, and often doth. Thus far Judge Vaughan.

CHAP.

CHAP. I.

Of Justices of the Peace, their Oath, Office and Power, in several Respects.

THE Word *Justice*, bears in it self so plain and easy a Definition, that it is altogether Needless to enter into any long Harangue about it: Let it suffice then, for their Antiquity, according to *Dalt.* 6. & *Lamb.* 10. that they were created 1 *Edw.* 3. ca. 15. but first receiv'd the Name from the 36 *Edw.* 3. c. 12. He has great Power and Authority in Determining many Cases, according to the Tenour of the Oath administred to him, which is this, *Lamb.* 53.

YE shall Sweat, *That as Justice of the Peace in the County of M. in all Articles in his Majesty's Commission to you directed, you shall do equal Right, to the Poor and to the Rich, after your Cunning, Wit and Power, and after the Laws and Customs of this Realm, and Statutes thereof made: And you shall not be of Counsel of any Quarrel hanging before you: And that you keep your Sessions after the Form of the Statutes thereof made: And the Issues, Fines, and Amerciaments that shall happen to be made, and all Forfeitures, which shall fall before you, you shall cause to be entred without any concealment (or Imbezelling) and truly send them to the King's Exchequer: You shall not Take for Gift, or other cause, but well and truly you shall do your Office of Justice of the Peace in this behalf: And that you take nothing for your Office of Justice of the Peace to be done, but of the King, and Fees accustomed, and Costs limited by the Statute: And you shall not direct, but cause to be directed, any Warrant (by you to be made) to the Parties, but you shall direct them to the Bailiffs of the said County, or other his Majesty's Officers (or Ministers) or other indifferent Persons, to do Execution thereof. So help you God, and by the Contents of this Book.*

With

With this Oath is to be administred the Oathes of 1 *Gul. & Mar.* c. 8. before a Justice can Exercise the Office of a Justice of the Peace; which done, he has full Power to to administer the same Oathes to others; and hath power to Examine upon Oath, where the Statute referreth the Tryal to the Justices Discretion, *Dalt.* 20. His Warrant is not to be disputed by the Constable, for any thing wherein he hath Jurisdiction of the Cause.

What Justices of the Peace may do by Virtue of their Commission, from One to Eight.

Of the Authority of One Justice.

One Justice of the Peace, on Complaint, may commit till the Assizes, or Sessions, all Popish Recusants Convicted above 18 Years of Age, under the Degree of Barons. He may prevent a Riot, stay it, and commit them that are concerned in acting of it. He may upon view, or Proof by two Witnesses, Warrant the Levying 20*l.* Forfeiture for an Unlicens'd Ale-house to be given to the Poor.

He may cause High-ways to Markets to be inlarged, and cleansed of Trees and Bushes, 12 *Eliz.* 1. cap. 5. He may punish prophane Swearing, by Fine, made out by Testimony or Confession. He may punish Offences in Watermen, and Transporters of Corn.

One Justice of the Peace may Bind a Cheater to his good Behaviour, *Dalt.* 63. 7 *Jacobi* (1.) He may convict of Drunkenness, by 12 *Jacobi* 1. ca. 7. He may Seiz the Goods of Capties, within a Month after their Arrival, 22 *Hen.* 8. c. 10. He may Record a Riot in his view, and commit the Rioters, or Bind them to their good Behaviour; but single, or alone, proceed no further, *Dalt.* 193.

One Justice of the Peace may Examin and Bind over unlawful Hunters in the Night-time, 1 *Hen.* 7. c. 7. The like of Taking or Killing Conies in the Night-time, 22, 23 *Caroli* 1. He may take an Indictment

of

of Barretry, without a Special Commission, 2 Cro. 32. A Justice of Peace in London ought to send Felons to the common Goal, not to the Counter, 1 Co. 120. He may Convict of the Breach of the Lord's Day, against 29 Car. 2. And may allow of cause for Travelling in a Boat on the Lord's-Day, according to the said Statute. A Justice of the Peace, inhabiting in the Hundred where one was Robbed, may if he be at York or London, take the Party's Oath, being but an Examination, and no Act of Jurisdiction.

Of the Authority of Two Justices.

Two Justices of the Peace may Bind One to the Quarter Sessions, to answer his Offence against a Penal-Law, *Lamb.* 187. *v. Bate.* They may allow and Discharge an Ale-house-keeper at Discretion. They may dispose of at Discretion, all Forfeitures to grow and become due on the Statute of Rogues. They may Fine the Head-Officers in Burroughs and Market-Towns, who are remiss in viewing the Weights and Measures, and break and burn those that are Defective; and Fine Sellers with unlawful Weights, at Discretion.

Two Justices may Assess all the Parishes within the Hundred, proportionably, for the Parties charged upon a Robbery. They may allow Surveyors, and their Servants, to make Materials in another Parish, for the mending the High-ways where they are Defective.

Two Justices may allow Scavengers under their Hands, Confirm a Tax of Constables, Church-Wardens, and Surveyors, &c. They may (one being of the *Quorum*) convene before them the Bailiff and High-Constables, and take their Accounts of Forfeitures and Defaults, Estreated concerning High-ways.

They may take Order about a Bastard Child laid in the Parish, 18 *Eliz.* 7 *Jacob.* &c. They may License poor People Diseased, to Travel to the Bath for Remedy, &c. 39 *Eliz.* 4.

Two

Two Justice, one being of the Quorum, may Bail a Person Arrested for Manslaughter, Felony, or on Suspicion. They may also take an Indictment and Inquisition, *Lamb.* 48. They may likewise Reform all False Measures, or Neglect of Clerks of the Market, *Dalt.* 251.

Two Justices may Search for Popish Books, and Relicks, 3 *Jac.* 1. c. 5. And Punish Defaults in the Overseers of the Poor. May Warrant the Church-Wardens and Overseers to Levy Arrears of the Rates for the Poor. Likewise Punish Offenders in disturbing the Execution of the Statute against Rogues.

Of the Authority of Three Justices.

Three Justices (one being of the *Quorum*) may License under their Seals, Badgers and Drovers, 5 *Eliz.* 12. May License Glass-men, to Travel without Begging in the County, 39 *Eliz.* c. 4.

Three Justices may take the Oathes of Two Witnesses of Depraving the Sacrament, 1 *Ed.* 6. 1. May License the Buying of Corn, to transport from one place to another, 5 *Eliz.* 12.

Of the Authority of Four Justices.

Four Justices may Remand by Warrant under Seal, Malefactors flying into *England*, 7 *Jac.* 1. c. 1. May consent with the Sheriff, or Goaler of a Corporation, for the removing of Sick Persons, or others, 19 *Caro.* 2. c. 4. May Seiz a Recusant's Arms, *Jac.* 1. c. 5. They may Tax the Inhabitants, and make Collectors and Overseers for the Repairing a Bridge, where it is not known who ought to repair it, 22 *Hen.* 8. c. 5. They may Discharge under Seal, an Apprentice Abused by his Master. With several other Things, relating to the Conservation of the Peace and Benefit of the Subject, by their Authority, which is great, by reason of their Conjunction.

Of the Authority of Six Justices, &c.

Six Justices of the Peace may appoint a Common-Goal for the Sheriff to have the Custody of it, 13 *Hen.* 8. They may (one being of the *Quorum*) execute the Laws of the Commissioners of the Sewers, *Dalt.* 219.

In what Cases Justices of the Peace are subject to Fines, and Imprisonments.

When a Justice fails to do Justice, he may be put out of Commission and Punished, 4 *Hen.* 7. c. 12. *Crompt.* 120. *H. Nom.* 8. *Lamb.* 376.

If he does not Execute the Statute against Riots, he is to pay 100 *l.* Fine. 13 *Hen.* 4.

If he Embezzels, and Razes Records, he is liable to Fine, Imprisonment, and loss of Office, *Lamb.* 631.

Where the Matter concerns the King, he may be Imprisoned for taking Bond in his own Name, and not *in Domino Regi*, 33 *Hen.* 8. c. 9.

In the case of Bailing one not Bailable, and refusing to Bail one Bailable, and Detaining him, he is Fineable, beside paying Double to the Prisoner, 3 *Edw.* 1. c. 15. 23. *Hen.* 6. c. 10.

CHAP. II.

In what Case Recognizances are to be taken, and how Warrants are to be made out; with the Fees of a Justice.

SUreties in Recognizance shou'd be Subsidy Men, and besides the Party himself, there must be two others, *Lamb.* 101. *Dalt.* 276.

It is in the Discretion of a Justice of the Peace, if he takes a *Recognizance ex Officio*, to appoint the Number of the Sureties, their Sufficiency in Goods and Lands, and the Sum of Money, and how long the Party shall be Bound, *Lamb.* 100. *Dalt.* 178.

A Recognizance expressing no time of Appearance, but generally to keep the Peace is good.

A Recognizance for the Peace, unless the Words expressed, for keeping of the Peace, seemeth void.

So it is if a Recognizance be, that the Recognizor shall not Beat or Maim *D.* without the expressing the keeping the Peace in it.

A Justice of Peace may make his Warrant to come before himself, yet in a Warrant for the Peace, the usual manner is otherways. *Dalt.* 461.

A Warrant made in the King's Name, ought to be made to all ministers, as well within Liberties, as without.

A Warrant for Treason, Murder, or such like capital Offence, need not contain the Special Matter or Cause.

If a Justice of the Peace make a Warrant beyond his Authority, it is not Disputable by a Constable or other Officer, but must be Obeyed, unless it be to do a thing out of the Justices Jurisdiction, in a Cause where there is no Judge; for if in this latter Case the Officer execute the Warrant, he is Punishable, *Dalt.* 865. *Lamb.* 91.

A Warrant directed to Two jointly to Arrest a Person, he may be Arrested by either of them.

A written Warrant must be under the Justice's Hand and Seal, his Hand at least; but 'tis better to be Seal'd as the usual way is.

A Mittimus must contain the Name of the Party or Parties, his or their Offences, and the time of Imprisonment, that it may appear whether the Prisoner be Bailable, or not. *Dalt.* 439.

And when the Mittimus is General, the other Justices that Bail must take Notice at Peril.

Law

Law Cases relating to the Office of a Justice of the Peace.

IF the Warrant be to bring before him, or any other Justice, it is at the Election of the Officer to which Justice he will go.

A Warrant may be made to bring before a particular Justice.

Justices not to Imprison, but in the Common Goal.

One Justice of the Peace cannot commit another Justice for Breach of the Peace.

Sessions of the Peace may.

If a Justice pursue not the Statute, there his Act is void: But if he pursue it, then neither B. R. nor Justices of the Peace can discharge him.

Ale-houses.

One was Indicted for selling Ale in Black Pots, being not Sealed Measure.

All Indictments against Persons for selling Ale without Licenle, must conclude with the Clause, *contra formam Statuti*.

Where an Inn doth use the Trade of an Ale-house, 'tis within the Statutes of Ale-houses.

Husband must be joined with the Wife in an Indictment, for the Wife's selling Ale without Licenle, because he must pay the Fine.

An Indictment was preferred against a Brewer for selling Ale to one that Retailed the same, not being Licensed.

Any one may erect an Inn for Lodging for Travellers, without any Allowance or Licenle.

A Form of a Warrant for renewing Licenses of Ale-house-Keepers.

Middlesex. *To the Constable of, &c.*

THese are (in His Majesty's Name) to command you to warn all the Licensed Ale-house-Keepers, Victuallers, and such others within the said Hundred, as do use commonly selling of Ale, Beer, Perry or Syder, personally to appear before me at the House of E. D. &c. upon Monday the fifth day of May, at nine of the Clock in the Forenoon of the same day; and to bring with them then and thither, as well their former Licenses, as also a Certificate, of the Civil Demeanours and Fitness of themselves for that purpose to be new Licensed, and for Convenience of Situation and Accommodation of their respective Houses for that purposes. The same Certificate to be signed with the Hands, at least, of two substantial, honest, discreet and civil Inhabitants of the respective Parishes where they do now dwell. And have you there the Names of such Persons as you shall have so warned, together with the Names of the several Parishes, and places of the said Parishes where their said Houses are scituate, and by what Signs the same are known; hereof and that such of them be continued, and such of them suppressed, as shall be thought fit. And have you there also this Precept. Given under our Hands and Seals at &c.

The Form of a Warrant for Suppressing an Ale-house.

Middlesex. E. B. and L. D. two of His Majesty's Justices of Peace, within the said County of N. To the Constables of S. and either of them, Greeting.

WHereas we are credibly informed, that R. P. of your Town, Victualler, is himself a Man of ill Behaviour, and besides doth suffer Evil Rule and Disorder to be kept in his House, contrary to the Laws and Statutes of this Realm; These are therefore to Will and Command you, forthwith to repair to the House of the said R. P. and to charge him

him to forbear keeping any longer any Ale-house or Tipling-house, and from common selling of Ale or Beer as his Peril; and withall that you cause his Sign to be pulled down. And hereof fail not, as you, and either of you, will answer the contrary at your Peril. Given under our Hands and Seals at N. the——Day of——and in the——Year of the Reign of our most Gracious Sovereign Lord King William *the Third*, &c.

But it is usual with the Justices, e'er they grant this last Warrant, or a Warrant to Levy Monies forfeited by Ale-house-Haunters, to send for the Offenders, and examine them of the Offence, that the Truth may be known, and that the Information be not upon the account of Brangling or Malice between the Parties so informed against, and the Party informing, but the Truth known upon plain Conviction. Forfeitures in the latter Case may be Levyed, upon refusal to pay, by Distresses and Sale of Goods, and for want of such Distress, the Offenders to be set in the Stocks, &c.

Apprentice.

Must be bound out by Indenture.

Master cannot send Apprentice beyond the Sea (except he go with him:) But may send him in any place in *England*.

Action of Account, is not maintainable against an Apprentice.

By Custom of *London* a Man may turn over his Apprentice to any other within the City. *Mayd.* 1. A

Action lies by Master, for inticing an Apprentice to depart from his Service; so if inticed to take Money, or Play.

Doubted, whether the Quarter-Sessions can discharge an Indenture of Apprenticeship, where the Apprentice was not imposed upon the Master by the Justices, and compelled to serve.

One Justice may punish such as, being between the Age of Ten and Eighteen Years, shall refuse to serve as an Apprentice at Husbandry, &c. being required thereto, 5 *Eliz.* cap. 4. shall be committed until he will serve.

May allow Masters to put away their Servants within the Term, if there be cause, but not their Apprentices: 5 *Eliz.* cap. 4. *Dalt.* p. 60.

May punish Masters abusing their Apprentices, and not obeying the Justice of Peace's Orders: 5 *Eliz.* Ca. Shall be bound to appear at the next Quarter-Sessions.

A Form of a Warrant against a Master for abusing his Apprentice.

Middlesex. *To the Constable, &c. of L. &c.*

FOrasmuch as Complaint hath been made unto me by H. E. an Apprentice, &c. against N. L. his Master, both of the Parish aforesaid, That he the said N. L. doth not allow his Servant competent Meat, Drink and Apparel, and doth immoderately Correct him, without any cause at all, (or turneth him out of his House, and will not suffer him to return) [as the Case requireth.] These are therefore (in His Majesty's Name) to command you, that you, some or one of you, do cause both the said Parties to come before me at L. on Tuesday the ninth day of this instant May, at three of the Clock in the Afternoon, to the end that I may examine the same matter. Herein fail not, &c. Given under my Hand and Seal this, &c.

A Form of a Warrant against a Disorderly Apprentice.

Middlesex. *To the Constable,* &c.

FOrasmuch as Complaint hath been made unto me by R. H. Baker, against N. L. his Apprentice, both of your Parish of E. in this County, That the said N. L. is a sullen and disobedient Servant, and doth very much misbehave him-

self

self towards his said Master (or that the said N. L. hath departed from his said Master, &c.) These are therefore, &c. as in the foregoing Warrant.

The Form of a Warrant for a Fugitive Servant.

Surry, To the Sheriffs, &c.

WHereas H. N. *being lawfully retained in Service with* I. R. *of* E. *&c. is departed from his said Master's Service before the end of his Term, without his Master's leave, or Licenſe, (or without any reaſonable Cauſe) contrary to the Laws and Statutes of the Realm in this behalf provided. Theſe are therefore to Command you, and every of you, that you, or ſome of you, do Attach the Body of the ſaid* H. N. *and bring him before me, or ſome other of His Majeſty's Juſtices of the Peace, to find ſufficient Sureties, well and faithfully to ſerve his ſaid Maſter, according to the Covenant between them made. And if he ſhall refuſe ſo to do, that then you cauſe him to be conveyed ſafely to the common Goal of the County aforeſaid, there to remain till he ſhall be willing to do the ſame, and ſee you certifie ſuch your Doings at the next General Quarter-Seſſions of the Peace, to be held for the ſaid County. Given under the Hand of me* E. D. *one of His Majeſty's Juſtices of the Peace within the ſaid County. Dated, &c.*

Or thus, *That if the ſaid* H. N. *is willing his ſaid Maſter to ſerve again, you do cauſe him to be delivered, and if that to do he ſhall refuſe, that then you cauſe him to be conveyed to the Goal, &c.*

Arreſt and Impriſonment.

Arreſt, is to reſtrain a Subject of his Liberty againſt his Will, or to detain him in the Cuſtody of a proper Officer, legally authorized to do the ſame, until the Party, ſo arreſted, ſhall find Sureties (if Bailable by Law) for his Appearance before the Juſtice, &c. from whom the Proceſs or Warrant iſſued, to anſwer ſuch Matters as are contained therein: Or in ſuch

cases, where Bail is not allowable, the Officer ought to commit the Party to Goal, and there cause him to be Imprisoned, until he shall be from thence discharged by due Course of Law.

If a Constable, &c. have a Warrant from a Justice of Peace, to bring any Person before him, he ought first to require him to go before the Justice; and if he refuse, to compel him by Arrest; for such Requiring is no Arrest.

Any Person may be Arrested, who is under the Degree of a Peer of the Realm of *England*, by Warrant under the Hand and Seal of a Justice of the Peace.

A *Feme Covert* may be committed for a Force or Riot, but not an Infant; yet for not finding Sureties for the Peace, being demanded, an Infant may be committed.

For Misdemeanours against the King's Peace, an Offender may be Arrested by a Warrant; so that there be just Cause, or lawful Suspicion.

A Man who knoweth of a Robbery, may Arrest a Person by him suspected, and carry him to the Constable, if he be to be found, or otherwise Imprison him in the Stocks; or in case there be none, carry him to the next Constable, or to the next Justice to be examined.

If a Robbery, &c. be known to be committed, any one may Arrest a Person of ill Fame; and if he resist, may justifie beating of him.

If a Felony be committed, it is sufficient cause to Arrest any Person, that, upon search, is found in Company of the Offenders; and so it is to live idlely, and as a Vagrant.

Watch men may Arrest Night-Walkers, and if they suspect them, justifie the detaining them until the Morning.

Justices of Peace, and Sheriffs, ought not to commit, or imprison, any Person, but in the County Goal.

A Constable regularly ought to Imprison in the Stocks.

If

If a Constable, by Warrant from a Justice of the Peace, Arrests a Person, and he escapes into another County, he may Arrest him there upon fresh Pursuit, and bring him before the Justice.

The Constable carries a Man, Arrested for Felony, unto the Gaol, and the Gaoler refuseth him, he may be brought back to the Town where he was taken, and they shall be charged to keep him until the next Gaol-delivery: Or the Constable may keep him in his own House.

Bail.

Indictment removed by *Certiorari*, and no Bail put in above, the Court below may proceed (without a *Procedendo*.)

Where one is Bailable by Law, Action lies against the Justice of Peace that committed him.

Convict of Felony is not Bailable, nor is it safe for Justices of Peace to Bail where a Person is but suspected of Felony; but this is discretional in the Justices.

The Bail in Murther, Felony, &c. may keep the Murtherer, Felon, &c. as a Prisoner, till the day of Appearance, for the Bail is *Corpus pro Corpore*; and if Murtherer, Felon, &c. escape, Bail must render themselves.

Justice of Peace may be Fined for taking slender Bail.

If Mainpernors (or those that become bound with a Prisoner for his Appearance) do doubt that the Prisoner will fly, they may bring him before a Justice, who shall commit him, and discharge them: The like of a Person Bailed, as it seemeth.

Bastard Child.

If the two next Justices make no Provision for Bastard, the Sessions must settle it, as the two Justices ought to have done.

Sessions cannot originally make order to keep Bastard, but it ought to be made by the two next Justices to the place where the Child was born.

Maintenance of Bastard by Mother and reputed Father, is by these Modern Laws of 18 *Eliz.* cap. 3. and 7 *Jac.* cap. 6. the former Laws were only for Punishment.

Not questioned for having one Bastard: Then she had another, she is not to be proceeded against by 7 *Jac.* (as for a second Offence.)

The two next Justices are not to commit for not obeying their Order, but to take Recognizance for Appearance at Sessions.

Neither Sessions nor Assizes can meddle touching Bastardy, but upon Appeal; (otherwise the two Justices must order.)

If two Justices make an Oath, if Party refuse to perform, or enter into Recognizance to appear at the next Sessions, they may commit him without Bail.

If (by Practice and Design) a Child be born in a Parish, the Parish where the Practice was, shall keep the Child.

Bond to pay 10 *d.* per Week for keeping a Bastard, Defendant cannot plead that there was no Order made.

If a Harlot will take the Child whereof she is newly delivered, and cover it with Leaves, and let it lie abroad, whereby Vermin destroy it, this is Murther; 21 *Jac.* c. 27. *Comp.* 24. 8.

Indictment lies for Conspiring to charge one with a Bastard Child, and thereby also to bring him to disgrace.

An Indictment was preferred against one, for Conspiring to accuse another with being the Father of a Bastard Child.

To make an Order for a Bastard Child, there must be two Justices, whereof one to be of the Quorum.

An Order made by two Justices for the Maintenance of a Bastard Child, by 12 *d.* per Week, as long as the Child shall continue chargeable to the Parish, is good.

The

The Justices of Peace's Order must be paid Weekly, and not Monthly.

A Bastard Child of a Person able to keep it, and not like to be chargeable to the Parish, is not within the Statute of 18 *Eliz.*

If the Father of a Bastard Child dies poor, the Mother must provide for the Bastard if able, but if not, the Town where last setled.

Neither Sessions nor Assizes can meddle touching Bastardy, but upon Appeal.

The Sessions cannot make an Order for keeping of a Bastard, except upon an Appeal from the two Justices, which are first to make an Order.

The Form of a Warrant for a Reputed Father of a Bastard-child.

Middlesex. *To the Constables of* L. &c.

Whereas Complaint hath been made unto me K. L. *Esq; one of His Majesty's Justices of the Peace for the said County, by* S. T. *of your Town, single Woman, that she is gotten with Child by* D. E. *also of your said Town, Tayler. These are therefore to Will and Require you, and in His Majesty's Name straitly to charge and command you, and either of you, that immediately upon Receipt hereof, you Attach the Body of the said* S. T. *and thereupon bring him before me, or some other of His Majesty's Justices of the Peace for the said County, to find sufficient Sureties, as well for his Appearance at the next General Sessions of the Peace to be holden for this County, as also for his Good Behaviour towards His Majesty, and all his Liege People, in the mean time: And hereof fail not, as you will answer the contrary at your Peril. Dated,* &c.

An Order of the Justices of Peace for a Bastard-child.

THE Order of D. G. *Esq; and* N. R. *Esq; two of His Majesty's Justices of the Peace for the County of* M. made

made for the Relief of the Parish of E. of the said County, for the keeping of S. a Bastard-child, Begotten by O. P. of E. &c. on the Body of H. T. &c.

Imprimis. *Upon the Examination of the said H. T. duly by us taken, we do find that the said* O. P. *is charged to have divers times bodily and carnal Knowledge, between such Times,* [here name the Times] *and to be the only Father of the said Bastard-child, &c. And therefore we do Order and Adjudge him the said* O. P. *to be the Reputed Father of the said Child.*

We do further Order as followeth.

First, *That the said* H. T. *shall keep her said Child till it come to Eight Years of Age.*

Secondly, *That the said* O. P. *upon notice of this Order, shall, after such notice, pay unto the Hands of one of the Overseers of the Poor of* E. *for the time being, after the Rate of* 2 s. 6 d. *every Week, to be paid Monthly every Year, towards the Relief of the said Child, until it come to* 8 *Years of Age.*

Thirdly, *That after the said Child shall come to the Age of Eight Years, &c. that the said* O. P. *pay to the Overseers, &c. Five Pounds towards putting out the said Child to be an Apprentice, &c.*

Fourthly, *That the said* O. P. *presently give good Security to one of the Overseers, &c. to perform this our Order.*

Note, That by altering the Names, and Sum, as the Order in that Case shall be made; this Order in Form, with the Variation of the Town, and County, may generally serve on this Occasion.

Begger.

To beg Meat and Drink (for necessity) in passing between one Town and another, is not begging to make one a Begger within the Statute; and such shall only be sent where born, or last legally setled, and not to the common Goal, as a common Begger shall be.

If

If a Wanderer with a Child under Seven Years of Age, die, *(in transitu)* Child ſhall be ſent where born.

Pedlar carrying Wares to ſell in private Houſes (though in the ſame County) is a Vagrant, and puniſhable.

The Form of a Warrant for apprehending Beggars, and other idle Perſons.

Middleſex. *To the Conſtable and Headboroughs, and others His Majeſty's Officers of any the Pariſhes in the ſaid County, and to all others whom this doth or may concern.*

WHereas the Suburbs of London, and Places adjacent, are now infeſted with many Rogues, Vagabonds and Sturdy Beggars, and other idle Perſons, that can give no good Account of their Life and Converſation, to the danger of the Inhabitants, and contrary to the Laws and Statutes of this Realm: Theſe are therefore (in His Majeſty's Name) ſtrictly to charge and command you, and every of you, That, at all convenient times hereafter, taking with you a convenient Aid and Aſſiſtance, you make diligent ſearch, in the ſeveral Places aforeſaid, and [illegible] ſuſpected Places, within any the Pariſhes in the [illegible] for all ſuch Rogues, Vagabonds, and Sturdy Beg[illegible] other ſuſpected and idle Perſons; and them to apprehend and bring before us, or one of us, to be examined and dealt with according to Law. Hereof fail not, &c. Given under our Hands, &c.

Blaſphemy.

Blaſphemous Words are not only an Offence to God and Religion, but a Crime againſt the Laws, State and Government, and Chriſtianity is parcel of the Laws of England.

Burglary.

Burglary.

Burglary, is breaking and entring a Manſion-houſe in the Night, with a Felonious Intent, though it be not executed.

Night, by ſome, is held to be after *Sun-ſet*, and before *Sun-riſing*, but generally received to be in oppoſition to Day, when the Countenance of a Perſon cannot be diſcerned. *Dalt.* cap. 99. *Lo. Pl. Co.* cap. 14.

Entring a Houſe, (Doors open) a breaking; but no Burglary. Door or Window open, and Goods drawn out, no Burglary. But breaking Window, drawing Latch, unlocking Door, breaking Hole in Wall, make Burglary. So ſetting Foot over Threſhold, putting Hand, Hook, or Piſtol, within Window or Door, or turning a Key, (the Door locked within) is Burglary.

Divers come to commit Burglary, one does it (the reſt watching at the Lane's end) Burglary in all.

A Thief goes down a Chimney to rob, Burglary. So Thieves raiſe Hue and Cry, and bring the Conſtable, the Owner opens the Door, they bind the Conſtable, and rob the Owner, Burglary.

To break Glaſs in a Window [illegible] Manſion-houſe in the Night, and with Hooks draw Goods out and ſteal them, it is Burglary though no Perſon be in the Houſe.

The Servant opens the Window to let in a Thief, who comes in and ſteals, Burglary in the Stranger, but Robbery in the Servant.

If Thieves enter an Houſe through a Hole made before, no Burglary.

A Church, Out-buildings, as Barns, Stables, or a Shop, parcel of a Manſion-houſe; a Chamber in an Inns of Court or Chancery, or in a College, are Manſion-houſes; But a Booth is not, nor a Shop ſevered by Lease, where no Perſon lieth in the Night.

A Houſe broken open, with intent to commit Felony, is Burglary; But if to beat the Ower, or commit Treſpaſs,

Treſpaſs, otherwiſe. If to commit a Rape, it ſeems to be Burglary, though the Felony be not done. Clergy taken away in all Burglary by 18 *Eliz.* cap. 6. *Hale's P. C. 6. Tit. Burglary. Shepherd's Grand Aſſ. Tit. Crimes.*

Burning.

If I burn a Houſe wherein I am in Poſſeſſion by Leaſe, not Felony.

To make Felony it muſt be *Ædes alienas.*

Wilfully to burn a Houſe is Felony without Clergy.

Church and Church-wardens.

The Biſhop of the Dioceſs cannot appoint Commiſſioners to Rate a Pariſh for Repairs of their Church.

The Spiritual Court hath Power to compel the Pariſh to repair the Church by their Eccleſiaſtical Cenſures, but they cannot appoint what Sums are to be paid for that purpoſe, becauſe the Church-wardens, by the conſent of the Pariſh, are to ſettle that.

If a Church be ſo much out of Repair, that 'tis neceſſary to pull it down, and that it cannot be otherwiſe repaired, in ſuch caſe, upon a general Warning, or Notice given to the Pariſhioners, or from Houſe to Houſe, the major part of them then preſent, and meeting according to ſuch Notice, may make a Rate for pulling down the Church to the Ground, and building it upon the old Foundation, and for making Vaults where they are neceſſary; and though the Rate be higher than the Money paid for all this, yet 'tis good, and the Church-wardens are chargeable for the Overplus, they not being able to compute to a Shilling.

If any of the Pariſhioners refuſe to pay their Proportion, according to the Rate, they may be libelled againſt in the Spiritual Court; and if the Libel allege the Rate to be *pro reparatione Eccleſiæ* generally, (though in ſtrictneſs *Eccleſia* contains both the Body

and

and Chancel of the Church) and (by the Opinion both of the *Court of Common-Pleas*, and of the *Exchequer*) shall be intended, that the Rate was only for the Body of the Church.

The Bishop, or his Chancellor, cannot set a Rate upon a Parish, but it must be done by the Parishioners themselves.

Church-wardens may make Rates themselves, if the Parishioners are summoned, and refuse to meet.

Drunkenness.

If twice Drunk, and convicted, bound to Good Behaviour.

Drunkard may be punished in Ecclesiastical Court, or by Justice of Peace.

Being a Drunkard, cause to remove a Magistrate.

For cause of Drunkenness, a Magistrate may be removed.

The Form of a Warrant for Drunkenness, the first Conviction.

Middlesex. *To the Constable of the Hundred of* K. *in the said County, and to the Churchwardens of the Parish of*, &c. *in the County aforesaid.*

FOrasmuch as it hath this present Day been duly proved before me, That I. N. *of the Parish of* O. *was on the* 2d *of* April *last Drunk in the Parish (contrary to the form of the Statute in that case made and provided:) These are therefore (in His Majesty's Name) to command you, that you the said Constable or Churchwardens, do require the said* I. N. *to pay (for the said Offence) to the Hands of you the said Churchwardens (to be by you accounted for to the use of the Poor of the same Parish) five Shillings of Lawful Money of England, within one Week now next ensuing, and if the said* I. N. *shall refuse or neglect to pay the same as aforesaid, that then you the*

the said Constable or Churchwardens (do levy to the use aforesaid) the said 5l. of the Goods of the said L. N. *by Distress and Sale of the same, (rendring unto him the Overplus of the Moneys remaining of the said Sale,) and if the said* L. N. *be not able to pay the said sum of 5l. that then you the said Constable do set him in the Stocks, there to remain by the space of 5 Hours. Hereof fail not at your perils. Given under, &c.*

Convicted upon my view.
Convicted by his Confession before me.

The second Conviction.

Middlesex. *To the Constable of the Hundred of* R. *in the said County, and to every of them, and to the Keeper of His Majesty's Gaol for the said County at* R. *in the County aforesaid.*

FOrasmuch as it hath been this present Day duly proved before me, That L. N. *of the Parish of* O. *was upon the 2d of* April *last Drunk in that Parish (contrary to the Form of the Statute in that case made and provided:) And forasmuch as the said* L. N. *hath been once before Lawfully convicted of the said Offence of Drunkenness: These are therefore (in His Majesty's Name) to command you the said Constable and Borsholders, that you, same or one of you, do cause the said* L. N. *to come before me, or some other Justice of the Peace of the said County to be bound with two Sureties to His said Majesty in one Recognizance or Obligation of 10l. with Condition to be from thenceforth of good Behaviour (according to the form of the Statute in that case made and provided) which if he shall refuse to do, that then you do him safely convey to the Gaol aforesaid, and deliver him there to the said Keeper of the same, (together with this Precept.) Commanding also you the said Keeper to receive him into the said Gaol, and him there safely to keep, until he shall be so bound with two Sureties as aforesaid. Hereof fail not at your Peril. Given under my Hand and Seal at, &c.*

Felony.

Felony.

If the Sheriff or Bailiff, &c. having Warrant to Arre for Felony, kill the Offender, who will not obey, o suffer himself to be Arrested, 'tis not Felony in th Officer.

So a Person that pursues by Hue and Cry, or other wise, has Authority to Arrest a Felon that flies.

Felon breaking from his Conductors going to Gaol may be killed by them, if they cannot otherwise tak him.

That which, in these Cases, makes the killing dispunishable, is, because they acted by an Authority, without any Malice, which, if proved, may alter the case.

The Form of a Warrant to Attach a Felon, or one for Felony.

Middlesex. *To the Constables of E.*

Forasmuch as Complaint hath been made unto me by N. E. *that of late he hath had certain Goods feloniously taken from him; and that he hath in Suspicion one* R. H. *of your said Town. These are therefore to Will and Require you, and in His Majesty's Name straitly to Command you, and every of you, that immediately upon the receipt hereof, you do Attach the Body of the said* R. H. *and thereupon to bring him before me to Answer the Premisses, and hereof fail not at your Perils. Dated, &c.*

The Form of a Warrant for a Person who hath dangerously Hurt, or Wounded another, &c.

Middlesex. *To the Constables of E. &c.*

Forasmuch as I am credibly informed that B. A. *of your Town, Shoemaker, hath now, or lately, dangerously Hurt, or Wounded, one* E. D. *of your said Town, Taylor, by*

a Blow, or Blows, which he hath given to the said E. D. on the Face and Head, &c. so that the said E. D. is in danger of Death thereby. These are therefore in His Majesty's Name, straitly to Charge and Command you, that immediately upon sight hereof, you, or one of you, do bring the said B. A. before me, or some other of His Majesty's Justices of the Peace of this County, to find sufficient Sureties, as well for his Appearance before His Majesty's Justices at the next General Goal-delivery to be holden for this County, then, and there to Answer unto the Premises, and to do and receive therefore, that which by the Court shall be Enjoyned him: As also, that he the said B. A. shall, in the mean time, keep the King's Peace, towards his said Majesty, and all his Liege People, and especially towards the said E. D. And hereof fail not at your Perils. Dated, &c.

A Form of a Warrant to bind Persons to give in Evidence against a Felon.

Middlesex. To the Constables, &c. of, &c.

These are to require you, upon sight hereof, to warn to be before me, or some other of His Majesty's Justices of the Peace of this said County, within two days next following, A. B. C. D. E. F. &c. to the end that they may be found to make their personal Appearance at the General Goal-delivery or Quarter-Sessions to be holden for this County, then and there to testifie their Knowledge concerning a Felony supposed to be done by R. H. now a Prisoner in the Goal of N. and that you do then go with them to the Justices with this Warrant. Hereof fail not, &c.

Goal.

Every County hath two Gaols, one for Debt, which may be in any House where the Sheriff will. The other is for the Peace, and Matters of the Crown, which is the County Goal.

Gaoler

Gaoler shall be answerable for Escapes, and if no sufficient, *respondeat superior.*

If Gaol broken by Thieves, Gaoler is chargeable (otherwise not by Enemies.)

A Warrant to allow a Poor Prisoner Relief.

Middlesex. *To D. E. Gent. Treasurer, for the Relief of the Prisoners in His Majesty's Gaol for the said County at* [illegible] *in the County aforesaid.*

WHereas N. T. *(now a Prisoner in the said Gaol) is in very great Necessity, for want of present Relief for his Subsistence there. These are therefore (in so far forth as in me lieth) to appoint and authorize you the said Treasurer to allow unto the said* N. T. *competent Relief (during his Necessity) in the said Gaol. Given under our Hands and Seals the Fourth day of* March, *Anno Dom.* 1700.

For a Prisoner to be Bailed.

THese are to charge and require you, That immediately (upon your Receipt of this) you bring before me the Body of D. E. now in your Custody, to be Bailed as Law requires. Given under, &c.

A Discharge of a Prisoner out of Goal.

Middlesex. *To the Gaoler or Keeper of, &c. We R. L. and C. B. Esquires, two of His Majesty's Justices of the Peace for the County aforesaid, send Greeting.*

FOrasmuch as H. L. *of* E. *&c. Barber, hath found sufficient Sureties before us, for his Personal Appearance at the next Quarter-Sessions, to be holden at* E. *aforesaid. These are therefore (in His Majesty's Name) to Require and Authorize you, That forthwith upon Sight hereof, you Discharge the Body of* H. L. *aforesaid, if he be Detained for no other

ther Cause, but upon A. B. and E. F. their Warrant, and this shall be your Discharge. Given under our Hands and Seals at L. &c.

Good Behaviour.

Justice cannot bind to Good Behaviour upon a General Information, or commit for not finding Sureties upon such Information.

May break House upon Warrant for the Good Behaviour.

If Justice (for want of Sureties for Good Behaviour) commits (without good cause) False Imprisonment.

To say of a Mayor, he is a Fool, breach of Good Behaviour.

So to threaten Witnesses.

A Man cannot be Indicted for saying of a Justice of Peace, he understands not the Statutes of Excise; but may be bound to the Good Behaviour.

House of Correction.

If delivered of a Child in the House of Correction, the Child must be sent to the Parish from which the Mother was sent.

A Rogue must not be sent to the House of Correction, but Whipped, and sent to the Place where last setled (if known) else to the place of Birth. But the House of Correction is for the Poor of the Parish, that refuse to work.

Inmate.

The Statute of 35 *Eliz.* was made against such Inmates are, where there are more Families in one House than one, and they must be then at their own finding. Therefore if Father entertain his Daughter and her Husband, &c. (no Inmates.)

Lord's-

Lords-day, or Sunday.

Setting open Shop on that Day, is punishable by Statute Law.

Constable, for Arresting (for Good Behaviour) on that Day in the Church-yard, coming from Church, fined.

Insurrections, Affrays, &c. in breach of the Peace on that Day, must be suppressed.

The Stat. 29. of King *Charles* II. has made a great Alteration in divers Cases; for before that Statute, the Hundred was chargeable for a Robbery, though done on a Sunday in time of Divine Service; also an Arrest on that Day had been good.

A License to Travel on the Lord's-Day.

To all Constables, &c.

These are to Certify, That A. B. *of* D. &c. *where he now Dwelleth, having Informed me, that he hath a Brother living at* G. *in the County of* H. *where he lieth now very Sick, and he hath a Desire to see him. Know ye, That for this Cause, I do hereby License him to Travel upon the next Lord's-Day, the direct Way to his Brother, Willing and Requiring you, not to molest or hinder him for the same, so that he behave himself Orderly in his Travel. Given under my Hand, &c.*

Peace.

One thousand Pound Bond may be required for the Peace, (as the case may stand) *viz.* if the Person be so dangerous.

If he which is bound to the Peace break his Recognizance, he may be indicted for it, for it is a new Offence.

One bound to the Peace upon Malice, or for Vexation, may be discharged by the *King's-Bench.*

Justice

Justice may take Money to lie *in deposito*, for Security of the Peace, and if break the Peace, the Money to be forfeited to the King.

Two Justices (though neither of the *Quorum*) may enquire of unlawful Assemblies, though they cannot determine the same.

The Form of a Warrant for the Peace.

Middlesex. *To the Constables of E. &c. and to either of them.*

Forasmuch as G. H. *of your said Town, Yeoman, hath required Sureties of the Peace against* N. O. *of your said Town, Labourer, and withal hath taken his Corporal Oath before me, that he requireth the same, not for any private Hatred or Evil Will, but simply that he is afraid of his Life, or the Hurting or Maiming of his Body, or the Burning of his Houses: These are therefore to Will and Require you, in His Majesty's Name, straitly to charge and command you, that immediately upon the sight hereof, you, or one of you, require the said* N. O. *to come before me, or some other of His Majesty's Justices of the Peace within the said County, to find sufficient Sureties, as well for his Appearance at the next Quarter Sessions of, &c. to be holden for this County; As also that the said* N. O. *shall in the mean time keep His Majesty's Peace, as well towards His said Majesty, as towards all People, and especially towards the said* G. H. *and that if he shall refuse so to do, that then immediately you do convey the said* G. H. *to the common Goal of the said County, there to remain until he shall be willing to do the same; and see that you certifie your Doings in the Premisses to the Justices of the said Sessions, and have there this Warrant, Dated at, &c.*

A Release of the Peace.

Midd. ss. MEmorandum, *Quod tricesimo die Octobris, Anno Regni, &c. decimo prefatus,* I. N. *venit coram me predicto* N. R. *& Gratis remisit & relaxavit*

vis (quantum in ipso est) prædictam securitatem pacis, per ipsum versus infranominatam Prudentiam Pell, ceram hic positam, Die & Anno supradictis.

The Form of a General Warrant for Misdemeanour.

Surry. N. L. *Esq;* one of the Justices of the Peace, &c. to the Constables of L. &c. in the said County, and to every of them.

THese are to Will and Require you, in his Majesty's Name, straitly to Charge and Command you, upon sight hereof, to attach, and forthwith to bring before me the Body of R. H. Tyler, to answer such Matters of Misdemeanour to His Majesty's behalf, as shall be objected against him; and hereof fail not at your Peril. Given under my Hand, &c. (or) Dated, &c.

Assessment for them ought to be made according to the visible Estates of the Inhabitants there, (both real and personal) but not for any Estate they have elsewhere. The Occupiers of the Lands (and not the Landlords) are to be taxed.

The Grandmother (being of Ability) had a poor Grandchild relieved of the Parish, who marrieth; her Husband is liable towards keeping the Child, for that his Wife was of ability when he married her; otherwise if she had not been of ability. And the Sessions must order what he shall contribute towards the Charge.

But the Statute of 43 *Eliz.* cap. 2. concerning the Poor, that enables Justices of Peace to Tax a Neighbouring Parish: The Justices may Tax any of the Inhabitants, but not the whole Parish.

A War-

A Warrant for the Overseers of the Poor to give up their Accounts.

Surrey. *To the High Constable of the Hundred of B. &c.*

THese are in His Majesty's Name, to Charge and Command you forthwith to give Notice to the Church-Wardens, and Overseers of the Poor of every Parish within your Hundred, that they do personally appear before us at *Guilford*, at the Sign of the *Rose*, on *Wednesday* the 16th of *October* next coming, by 9 of the Clock in the Morning, or Forenoon of the same day, to yield up, and make a true and perfect Account in Writing, Subscribed with their Names of all such Sums of Money, as they have Received, or Rated and Assessed, and not Received, for and towards the Relief of the several Poor of their several Parishes, and also of such Stock (to set the Poor on Work) as is in their Hands, or in the Hands of any of the said Poor, and of all other things concerning their Office, and hereof that they fail not at their, and every of their Perils. And further we Require you, that you give Warning to the Petty Constables of every Town, within your said Hundred, that they, or one of them be also then present before us, to inform and certify us of the Names of such other persons, as are meet and fitting to be Overseers of the Poor within their several Towns for this Year next ensuing, and hereof Fail not at your Peril.

Note, *That this Warrant must be under the Hands and Seals of two Justices at the least, the one to be of the* Quorum.

The Form of a Warrant to the new Overseers to take their Charge.

Middlesex. *To the Overseers of* E. &c.

BY Virtue of a Statute made in the 43d Year of the Reign of our Sovereign Lady Queen *Elizabeth*, (Entituled *An Act for the Relief of the Poor.*) These are to Will and Require you whose Names are here under-written, That you, together with the Churchwardens of your Parish, for the Time being, do (according to the Form of the same Statute) take Order from Time to Time, for the Year to come, for the setting to Work the Poor within your Parish, and for raising a convenient Stock of some Wares or Stuffs in your Town, to that Purpose, and providing necessary Relief for such as are Lame or Impotent amongst you, and for the placing out Apprentices, such Children whose Parents are not able to maintain them: And hereof see that your fail not at your Perils. Dated, *&c.* Under the Hands and Seals of us, *&c.*

This Warrant must be under the Hands and Seals of two Justices of the County.

Rape.

Upon one of Seven Years doubted by the Court, but not of Nine Years or above.

In Rape ought to be Penetration and *seminis emissio*; and to commit a Rape and be present, he is a Principal.

Indictment naught if not said *ipsam rapuit*, but need not say *carnaliter cognovit.*

Reprieve.

Justices of Goal-delivery may (after the Sessions adjourned) Reprieve a Prisoner.

If after Reprieve (at another Goal-delivery) Prisoner prays his Clergy again, he may have it.

If Reprieved for six Weeks, and before that expires, the Reprieve is enlarged by the Judges, good.

Rogue.

Is not to be sent to the House of Correction, but to be Whipped, and sent where last settled, (if known) otherwise to the place of his Birth. But the House of Correction is properly for those that will not work.

If Inhabitants of the County go with Wares to sell at Houses in that County, they are Rogues.

Riot.

Fine upon Rioters cannot be less than 10 *l.* for the Principal, and four Marks a-piece for the rest.

Information against two Justices for not inquiring of a Riot, found against one of them, good.

Stage-Players may be indicted for Riot, and unlawful Assemblies.

A Warrant for certain Riotous Persons.

Middlesex. *To the Constables*, &c.

FOrasmuch as I am credibly informed by D. E. *Gent. that* G. H. *&c. and divers and sundry other Persons unknown, have come upon the Ground of the said* D. E. *in* L. *aforesaid, and there have been aiding and assisting to these Persons hereunder named, in forcible manner, to carry away the Wood and Timber, &c. thereof late growing, being the Wood and Timber of* D. E. *These are therefore (in His Majesty's Name) to command you, and every of you, to Arrest as well the said Parties hereunder named, as the said Parties unknown, being shewed unto you by the said* D. E. *and*

to bring the same before me, and this shall be your Warrant and Discharge. Given under, &c.

Recognizance.

It is a Bond of Record, not to be taken but by a Judge or Officer of Record.

In case where Justice, *&c.* has power to take Recognizances, if Party refuse to be bound, the Justice, *&c.* may send him to Gaol.

All Recognizances taken by Justices of the Peace, must be made to His Majesty in these words, *viz. (Domino Regi)* upon pain of Imprisonment, and such Recognizances are in the nature of a Statute Staple.

A Recognizance is a Record presently before it be made up in form.

They must be certified the next Quarter-Sessions after they are taken.

When you take a Recognizance of any, it must be in Latin; set down the time of making it, the Principal's Name and Dwelling-place, and his Trade or Calling, and so of the others his Sureties, and bind them (in a Sum of Money) to His Majesty; and that being done, you read the same Recognizance in English thus, (viz.) for the Peace.

YOU *A. B.* of *C.* &c. do acknowledge your self to owe unto our Sovereign Lord the King's Majesty *Twenty Pounds.* And you *C. D.* of *H.* &c. and *E. F.* of *L.* &c. his Sureties, do likewise each of you acknowledge to owe unto our said Sovereign Lord the King's Majesty *Ten Pounds* a-piece, to be levied of your several Goods and Chattels, Lands and Tenements, to His said Majesty, his Heirs and Successors: Upon Condition, That if the said *A. B.* shall personally appear before our said Sovereign Lord the King's Majesty's Justices of the Peace at the next General Sessions of the Peace to be holden for

for this Borough of *A.* and do then and there make answer unto all such Matters which on His Majesty's behalf shall be objected against him; and in the mean time to keep the Peace towards our said Sovereign Lord the King's Majesty, and all his Liege People, but especially towards one *G. H.* and do not depart thence without License from the Court, then your *Recognizance* to be void, or otherwise to stand in full force.

The Recognizance being made, is to be ingrossed in Parchment, and subscribed with the Justice's Hand only. But he that enters into it, need not put his Hand nor Seal to it.

Note, All Recognizances for the Peace, are to be stiled, *At the next Sessions of the Peace*: And for Felony, *At the next Gaol-delivery.*

If the Recognizance be to appear before the Justices of the Peace within Forty days next after the Date or taking of the Recognizance, *and before the end of the Forty days, a General Sessions of the Peace shall be holden, &c. the Party must appear before them at the same Sessions, though it be not so express'd,* &c. Bracton Condition 208. Cromp. 123. Dalt. 277.

The manner of entring the Note of Recognizances in your Book of Recognizances.

[A. B. *de* C. *&c. xx li. ad Comparendum ad proximam*
[*Sessionem Pacis & Conservare versus* C. D. *&c.*

{E. F. *de* C. *&c.* & G. H. *de* C. *&c.*} *xl.*

Bound over for the suspicious Stealing of a [*Horse*] being the Goods of *A. H.* &c. [*or as the Case requireth.*]

R. P. *de Paroch.* A. &c. Victualler—— 10 *l.*
R. S. *de Paroch.* A. &c. Victualler—— 5 *l.*
P. S. *de Paroch.* A. &c. Victualler—— 5 *l.*

Sub Conditione quod pradict' R. P. *bene & fideliter observabit omnes & singulos Articulos in Licentia sua pro Tipulatione Content'*

Capt' & Recogn' xx die Maij,] A. B.
Anno Dom. 1700. *Coram Nobis*, &c.] C. D.

The Recognizance must be certified to the next Sessions or Gaol-delivery where he or they is are, or hath been Justices, that the Party so bound may be called: And if the Party make default, then the same is there to be recorded; and the same *Recognizance*, with the Record of that Default, shall be sent and certified in the *Chancery*, the *King's-Bench*, or into the *Exchequer*.

Every Condition of a Recognizance must have these things.

1. It may be in English.

2. It must have the first Words, [*The Condition of this Recognizance is such, That if the above-bounden* A. B. *&c.*]

3. It must shew what he is bound to do: As, [*Personally to appear at the next* Quarter-Sessions *to be holden for the County of* L. *and in the mean time to be of* Good Behaviour *towards our Sovereign Lord the King, and all his People,*] or as the Case requireth.

4. To Close thus, [*Then this* Recognizance *to be void, or else to stand in force.*]

All this may be done on the back of the Recognizance, *or underneath it.*

A ſingle Recognizance.

Midd. ſſ. MEmorandum, *Quod quarto die* Januarij *Anno Regni*, &c. 12° A. B. *de* C. *in Com' pred'* Yeoman, *perſonaliter venit coram* I. W. *Armigo' uno Juſt' dict' Dom' Regis ad Pacem in Com' predict' Conſervand' Aſſign' & Recognovit ſe debere dict' Dom' Regi decem libras bona & legalis monetæ* Angliæ, *de Bonis & Catallis, Terris & Tenementis ſuis fieri & levari, ad opus dict' Dom' Regis Hered' & Succeſſor' ſuorum, ſi defecerit in Conditione indorſat'.*

To prefer an Indictment, and give Evidence.

Midd. ſſ. MEmorandum, *Quod quarto die* Septemb. *Anno Regni, &c. decimo* A. B. *de* D. *in Com'* L. Yeoman, *in propria perſona ſua venit coram me* I. W. *uno Juſticiariorum dict' Dom' Regis ad pacem in dicto Com' conſervandam, necnon ad diverſa Felonias, Tranſgreſſiones, & alia malefacta in eodem Com' perpetrat' audiendum, & terminandum aſſignat'. Et cognovit ſe debere dict' Dom' Regi quadraginta Libras de Bonis & Catallis, Terris & Tenementis ſuis ad opus dict' Dom' Regis levandas, ſub Conditione indorſata,* viz.

For two to give Evidence.

Midd. ſſ. MEmorandum, *Quod decimo die* Februarij *Anno Regni, &c. decimo* W. B. *de* S. *in Com' predict'* Husbandman, & W. R. *de* S. *in eodem Com'* Husbandman, *in propriis perſonis ſuis venerunt coram me* I. W. *uno Juſticiar' &c. ad pacem in Com' pred' conſerv' necnon ad diverſa Felonias, Tranſgreſſiones, & alia Malefacta in eodem Com' perpetrat' audiend' & terminand' aſſignat'. Et uterque eorum per ſe cognovit ſe debere dict' Dom' Regi viginti libr' de Bonis & Catallis, Terris & Tenementis, ſuis ad opus dict' Dom' Regis levandas, ſub Conditione indorſata,* viz.

Robbery.

Robbery is a felonious and violent taking away from the Person of another, Money or Goods to any value, putting him in fear, which distinguishes a Robber from a Cut-purse.

An Assault to rob, *without taking away*, no Felony.

All that come to rob are Principals, though one only actually do it.

Taking a thing in my presence, is, in Law, a taking from my Person by Assault, or putting me in a fear.

But if without putting me in fear, by Assault or Violence, no Robbery.

D. and *L.* attempted to rob two others, *D.* robbed one of them out of the sight of *L.* he was charged as Principal.

A Thief took 40 *s.* from one in the Highway, without putting him in fear, adjudged a bare Felony, for which he had Clergy, 5 *Eliz.* But now it seems, by 8 *Eliz.* cap. 4. Clergy is taken from such an Offender.

The Punishment of this Offence is Death, without Clergy. The Party robbed hath his Action against the Hundred.

If a Robbery be done after Day-break, and before Sun-rising, the Hundred shall be chargeable with it.

But if on the Lord's-day, the Hundred shall not be charged, but the Inhabitants shall make pursuit according to 27 *Eliz.* on forfeiture of as much Money as was lost, 29 *Car.* 2. cap. 7.

The Form of a Hue and Cry after Robbery, &c.

To all Constables and others, His Majesty's Officers, as well within the County of Surrey, *as elsewhere within the Realm of* England.

WHereas Complaint hath been made unto me J. W. *Esq;* one of His Majesty's Justices of the Peace within the County

County of Surrey, *by* J. N. *of* R. *&c. Grasier, that upon* Friday-night *last, being the* 25th *of* September *Instant, he was Robbed of one Hundred Pounds in Moneys numbred, by two Foot-pads on the Road, or King's High-way, between* K. *and* H. *in the Day-time; and hath Cause of Suspition of* I. K. *and* H. K. *two Lewd Rogues.* Here describe their Persons and Apparel, Setting down all such Marks as they may be known by. *These are to require you, and every of you, to make Search within your several Precincts for the said* I. K. *and* H. K. *And also to make Hue and Cry after them from Town to Town, and County to County, and that as well with Horse-men as Foot-men, and if you shall find them the said* I. K. *and* H. K. *both, or either of them, That then you carry the Party, or Parties so taken, before some one of the Justices of the Peace within the County where he or they shall be taken, by him to be dealt with according to Law,* &c.

And thus you may do, putting one, two, or more Names in, according as the Case requires, whether a Robbery on the High-way, or a Felony and Burglary committed in a House, or such like; in Barns, Stables, Out-houses, Stealing of Horses, or other Cattel, always describing the Parties in the Hue and Cry. So that they may be known; as also things taken, that if the whole, or any part be found about them, or in their Possession, they may be known, and brought as a Testimony against them, upon Examination.

The Form of a Warrant to search after a Robbery Committed, directed To the High Constables.

WHereas there have been of late many Robberies committed about E. *Now for the better finding out such Lewd Persons, we whose Names are here under-written, being His Majesty's Justices of the Peace for the County of* Surry, *have thought fit, and do hereby Will and Require you in His Majesty's Name, that forthwith you direct your Precepts to every Petty Constable within your several Hundreds, Commanding them to make Search in all Inns, Ale-houses, and other suspected Houses within your Precincts, for all such Per-*

Sons as are Masterless, or out of Service; as also for all Idle, Vagrant, Wandring Rogues, Beggars, and other Persons. And further, That every the Petty Constables within your Precincts, do take Examination and accounts of all those, and such other Persons, as be common Ale-house Haunters, or which expend their Money in Riot, or which do not Labour for their living, and have not wherewith to maintain them; and that the same Search be be holden all over your Hundreds the same Night, and at such other several times, as in your Discretions shall seem meet. And if any such Persons shall be found in the same Searches, and that upon yours, or the Petty-Constables Examination taken of them, or any of them, there shall be found any cause of Suspicion in them, or any of them, that then they bring the said Persons, so suspected, before us, or some one of us, or some other of the Justices of the Peace of this County, to be further examined in the said Causes, and to be further dealt withal according to Law and Justice. And for the better doing hereof, we require you to command in His Majesty's Name, that every Petty-Constable within their respective Precincts, do Require and Charge two chief discreet Headboroughs in every Parish, to assist the Petty-Constable in this Service. And hereof fail not at your Perils, &c. Dated, &c.

Sessions.

Justices of the Peace may keep their Sessions at which place of the County they will, if they be not restrained by a Statute.

Sessions may commit a Justice for breaking the Peace.

A private Sessions of the Peace is not said to be held for the County.

Order of Sessions quashed: Which was to keep his reputed Child, and doth not shew that it was a Bastard.

Sessions cannot meddle with a Statute, as Forgery, Non-residence, Witchcraft, &c. or other Offences by Statute, where power is not thereby given them.

Strictness,

Strictness of words not required in an Order of Sessions, though it ought in an Indictment.

Yet Formalty of words are necessary in some cases, in the Proceedings of Justices of Peace.

Order of Sessions final in relation to a Settlement of the Poor.

The *Court of King's-Bench* may judge of Fines imposed at Sessions, and mitigate them.

Supplicavit.

Is directed from the *Chancery*, to the Sheriff and Justices of the Peace of the *County*, to bind to the Good Behaviour, and it must be returned under the Hands and Seals of the Justices.

Upon special Supplicavit out of *Chancery*, may be committed for want of Sureties.

It is a judicial Writ, and cannot be executed by Deputy.

He that first receives the Writ, has the sole Power of executing it.

Wages.

The Justices ought to certifie into *Chancery*, their Rates of Wages made at *Easter*, though they then but continue the same that were the Year before.

Statute of Wages pleaded to retainer of a Shepherd, and that Statute as to Wages explained.

Action of Debt for Wages lies against an Executor, but that must be where one is retained, that is compellable to serve.

In an Action upon the Statute of Wages, Master cannot wage his Law.

Watch and Ward.

Every Justice of Peace may cause Night-watch to be duly kept for the Arresting Persons suspected, and Night-walkers of evil Fame or Behaviour.

This Watch is to be kept Yearly, from the Feast of the Ascension, till *Michaelmas*, and to continue all night.

None but Inhabitants in the same Town, are compellable to Watch, and the *Constable* may set such Inhabitants as refuse to Watch, in the Stocks, or upon complaint thereof to the Justices of Peace, Party refusing, may be bound to his Good Behaviour.

A Warrant to appoint a Watch.

Middlesex. *To all Constables, and others His Majesty's Officers whom these may concern, within the Parish of, &c.*

THese are (in His Majesty's Name) to Will and Require you from time to time, to appoint and settle sufficient Watches, (to meet at 9 at Night, and not to depart till 6 in the Morning, amongst whom a competent number of Housekeepers are always to be present.) And you, and every of you, are to bring us the Names and Conditions of your respective Watches at our said Weekly Meetings, that the Performance of your Duties herein, may be better known and taken notice of; His Majesty (in Council) having given us strict Command herein; You are likewise to give us an Account of all such as drop themselves beyond their Qualities, and to use your utmost Endeavours, by all the ways imaginable, to preserve His Majesty's Peace, during His Absence from this City. Dated this 9th Day of May, 1700.

A

A Warrant to search for, and apprehend Persons suspected for Treason.

Middlesex, *To the Constable, &c.*

WHereas A. B. *and* C. D. *are vehemently suspected to have committed Treason, whereof I have received Information: These are therefore (in His Majesty's Name) strictly to charge and command you, and every of you, upon sight hereof, without any delay, to make diligent search for the Bodies of the said* A. B. *and* C. D. *and them, or either of them, so found, to Attach and Arrest, and immediately upon such Arrest, to bring before me, at my House at* E. *in the said County, whereof you are not to fail at your Peril. Given under, &c.*

When any of these *Traytors* shall be brought before the Justice, he must take the Examination of them in Writing (but not upon Oath) but all Circumstances whereof he shall receive Information from the Accusers, and upon such other Circumstances as he in his own Discretion shall think fit, for the Discovery of such *Treason*.

A Form of a Warrant immediately in the King's Name, Grantable by Justices of the Peace.

WIlliam III. *by the Grace of God, King of* England, *&c. To our Sheriffs of our County of* M. *the High Constables of the Hundred of* D.—*The Petty Constables of the Town of* E—*And to all, and singular, our Bayliffs, and other Magistrates of the said County, as well within Liberties as without, Greeting, Forasmuch as* K. L. *of &c. hath come before Sir* H. L. *Knight and Baronet, one of our Justices of the Peace within the said County, and hath, &c. Concluding in the Justices Name thus: Witness the said* H. L. *at* D. *the—day of—&c.*

Here

Here *Note*, That where-ever the Warrant is made in the King's Name, as afore, there it seemeth it ought to be directed to all Ministers, as well within Liberties as without; for the King is made a Party; and so it may be done it seemeth in all other Warrants, especially for Felony, or for the Peace, or Good Behaviour, &c. because it is the Service of the King, and no Franchise or Liberty shall be allowed, or hold place against the King, *B. Franch.* 31. However it is farther held, That the Justices of the Peace of the County, may not intermeddle in any City, Town, or Liberty, which have their proper Justices. *Vide Dalton*, chap. 6. fol. 25. where you will find it set down more largely.

The Form of a Warrant to search for Stolen Goods.

Com. Middlesex. *To the Constable of K. &c. and to either of them.*

WHereas Complaint hath been made to me L. R. Esq; one of the Justices of the said County, by D. E. *of* G. *That upon Tuesday Night last, he had Feloniously taken from him certain Goods* [here name them.] *And that he is given to understand, that there are divers Parcels of such Goods, in the Hands, or Houses, of divers suspected Persons within your Town: These are to Will and Require you, and in his Majesty's Name, strictly to charge and Command you, that immediately upon the Receipt hereof, you make diligent Search in all and every such suspected Houses, and Places, within your Town and Parish, as you, and this Complainant, shall think convenient; and if, upon your said Search, you find any of the said Goods, or any other just Cause of Suspicion, that then you bring all such suspected Persons as you shall find, together with the said Goods, before me, or some other of His Majesty's Justices of the Peace for the said County, to make Answer thereto, and hereof fail not at your Peril. Dated, &c.*

Of

Of the Succession of the Crown, sitting of Parliaments, and Tryals of Treason.

AND now, to divert my Reader a little with what Provision the Parliament of *England* hath made, for the Settling the Crown upon the Head of a Protestant Prince, whereby the Rights and Liberties of English-men may be defended from the Usurpations of Tyranny and Arbitrary Power, I shall insert the Declaration, &c. presented to Their Majesties by the Lords Spiritual and Temporal, and Commons, assembled in Parliament, upon their Accession to the Throne.

WHereas the late King James *the Second, by the assistance of divers Evil Counsellors, Judges and Ministers, employed by him, did endeavour to Subvert and Extirpate the Protestant Religion, and the Laws and Liberties of this Kingdom; By Assuming and Exercising a Power of Dispensing with, and Suspending of Laws, and the Execution of Laws, without consent of Parliament: By Committing and Prosecuting divers Worthy Prelates, for humbly Petitioning to be excused from concurring to the said Assumed Power; by Issuing, and causing to be Executed, a Commission under the Great Seal, for Erecting a Court, called,* The Court of Commissioners for Ecclesiastical Causes. *By Levying Money for and to the Use of the Crown by Pretence of Prerogative, for other Time, and in other Manner than the same was Granted by Parliament. By raising and keeping a Standing Army within this Kingdom in time of Peace, without Consent of Parliament, and Quartering Soldiers contrary to Law. By causing several good Subjects, being Protestants, to be Disarmed at the same time, when Papists were both Armed and Employed, contrary to Law. By Violating the Freedom of Election of Members to serve in Parliament. By Prosecutions in the Court of King's-Bench, for Matters and Causes cognizable only in Parliament; and by divers other Arbitrary Illegal Courses.*

And

And whereas of late Years, Partial, Corrupt and Unqualified Persons, have been Returned and Served on Juries in Trials, and particularly divers Jurors in Trials for High Treason, which were not Free-holders. And Excessive Bail hath been required of Persons committed in Criminal Cases, to elude the Benefit of the Laws made for the Liberty of the Subjects: And Excessive Fines have been imposed; and illegal and cruel Punishments inflicted: And several Grants and Promises made of Fines and Forfeitures, before any Conviction or Judgment against the Persons upon whom the same were to be Levied. All which are utterly and directly contrary to the known Laws, and Statutes, and Freedom of this Realm. And whereas the said late King James *the Second, having Abdicated the Government, and the Throne being thereby vacant, His Highness the Prince of* Orange *(whom it hath pleased Almighty God to make the Glorious Instrument of Delivering this Kingdom from Popery and Arbitrary Power) did (by the Advice of the Lords Spiritual and Temporal, and divers Principal Persons of the Commons) cause Letters to be written to the Lords Spiritual and Temporal, being Protestants; and other Letters to the several Counties, Cities, Universities, Boroughs, and Cinque-Ports, for the chooſing of such Persons to represent them, as were of right to be sent to Parliament, to meet and sit at* Westminster, *upon the Two and twentieth day of* January, *in the Year One thousand six hundred eighty and eight, in order to such an Establishment, as that their Religion, Laws and Liberties, might not again be in danger of being Subverted. Upon which Letters Elections having been accordingly made.*

And thereupon the said Lords Spiritual and Temporal, and Commons, pursuant to their respective Letters and Elections, being now Assembled in a full and free Representative of this Nation, taking into their most serious Consideration, the best means for attaining the Ends aforesaid; Do, in the first place, (as their Ancestors in like case have usually done) for the Vindicating and Asserting their Ancient Rights and Liberties, Declare, that the pretended Power of Suspending of Laws, or the Execution of Laws by Regal Authority, without Consent of Parliament, is Illegal. That the pretended Power

of Diſpenſing with Laws, or the Execution of Laws by Regal Authority, as it hath been aſſumed and exerciſed of late, is Illegal. That the Commiſſion for Erecting the late Court of Commiſſioners for Eccleſiaſtical Cauſes, and all other Commiſſions and Courts of like nature, are Illegal and Pernicious. That Levying Money for or to the uſe of the Crown, by pretence of Prerogative, without Grant of Parliament, for longer time, or in other manner, than the ſame is, or ſhall be granted, is Illegal. That it is the Right of the Subjects to Petition the King, and all Commitments and Proſecutions for ſuch Petitioning, are Illegal. That the raiſing or keeping a Standing Army within the Kingdom in time of Peace, unleſs it be with conſent of Parliament, is againſt Law. That the Subjects which are Proteſtants, may have Arms for their Defence, ſuitable to their Conditions, and as allowed by Law. That Election of Members of Parliament ought to be free. That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or queſtioned in any Court or Place out of Parliament. That Exceſſive Bail ought not to be required, nor Exceſſive Fines impoſed, nor cruel and unuſual Puniſhments inflicted. That Jurors ought to be duly impannelled and Returned, and Jurors which paſs upon Men in Trials for High-Treaſon, ought to be Free-holders. That all Grants and Promiſes of Fines and Forfeitures of particular Perſons, before Convicted, are Illegal and Void. And that for Redreſs of all Grievances, and for the Amending, Strengthning, and Preſerving of the Laws, Parliaments ought to be held frequently.

And they do claim, demand, and inſiſt upon all and ſingular the Premiſes, as their undoubted Rights and Liberties; And that no Declarations, Judgments, Doings or Proceedings, to the Prejudice of the People in any of the ſaid Premiſſes, ought in any wiſe to be drawn hereafter into Conſequence or Example. To which Demand of their Right, they are particularly encouraged by the Declaration of His Highneſs the Prince of Orange, *as being the only means for obtaining a full Redreſs and Remedy therein.*

Having therefore an intire Confidence, That His ſaid Highneſs the Prince of Orange, *will perfect the Deliverance ſo*

far

far advanced by him, and will ſtill preſerve them from the Violation of their Rights, which they have here Aſſerted, and from all other Attempts upon their Religion, Rights and Liberties; the ſaid Lords Spiritual and Temporal, and Commons Aſſembled at Weſtminſter, *do Reſolve, That* William *and* Mary, *Prince and Princeſs of* Orange, *be, and be Declared King and Queen of* England, France *and* Ireland, *and the Dominions thereunto belonging, to hold the Crown and Royal Dignity of the ſaid Kingdoms and Dominions, to them the ſaid Prince and Princeſs, during their Lives, and the Life of the Survivor of them: And that the ſole and full Exerciſe of the Regal Power be only in, and executed by the ſaid Prince of* Orange, *in the Names of the ſaid Prince and Princeſs during their joynt Lives: And after their Deceaſes, the ſaid Crown and Royal Dignity of the ſaid Kingdoms and Dominions, to be to the Heirs of the Body of the ſaid Princeſs: And for default of ſuch Iſſue, to the Princeſs* Ann *of* Denmark, *and the Heirs of her Body: And for default of ſuch Iſſue, to the Heirs of the Body of the ſaid Prince of* Orange. *And the Lords Spiritual and Temporal, and Commons, do pray the ſaid Prince and Princeſs, to accept the ſame accordingly. And that the Oaths hereafter mentioned, be taken by all Perſons of whom the Oath of Allegiance and Supremacy might be required by Law, inſtead of them: And that the ſaid Oaths of Allegiance and Supremacy be Abrogated.*

I A. B. *Do ſincerely Promiſe and Swear, That I will be Faithful, and bear true Allegiance to Their Majeſties* King WILLIAM *and Queen* MARY. *So help me God.*

I A. B. *Do Swear, That I do from my Heart Abhor, Deteſt and Abjure, as Impious and Heretical, this damnable Doctrine and Poſition, That Princes Excommunicated or Deprived by the Pope, or any Authority of the See of* Rome, *may be Depoſed or Murthered by their Subjects, or any other whatſoever. And I do Declare, That no Foreign Prince, Perſon, Prelate, State or Potentate, hath, or ought to have, any Juriſdiction, Power, Superiority, Pre-eminence or Authority, Eccleſiaſtical or Spiritual, within this Realm.* So help me God.

Sitting

Sitting of Parliaments.

This is the sum and substance of so glorious a Foundation, whereon is Grounded the Liberty and Property of the Subject; and to remove all Doubts and Jealousies from his Majesty's good Subjects, about the sitting of Parliaments, in whom the Nation ever expected the Redressing their Grievances. It is thus Enacted, 6 *W.* & *M.* c. 2. That from henceforth a Parliament shall be holden once in Three Years, at the least. Within Three Years after the Dissolution of this present Parliament, and so of every other Parliament hereafter, Legal Writs, under the Great Seal, shall be issued for Calling, Assembling, and Holding another New Parliament. From henceforth, no Parliament whatsoever shall have any Continuance longer than for Three Years only at the furthest, to be accounted from the Day on which, by the Writs, they are appointed to Meet.

Trials for Treason.

I. And for the better Remedy of Trials, in Cases of Treason, it was Enacted, *Stat.* 7. *W.* 3. c. 3. After the 25th day of *March*, 1696. all, and every Person and Persons, Accused, and Indicted for High-Treason, whereby any Corruption of Blood may be made, or for Misprision of such Treason, shall have a Copy of the whole Indictment, but not the Names of the Witnesses, Five Days at least before he or they shall be Tried for the same, whereby to enable them to Advise with Council thereupon, his, or their Attorney, or Agent, requiring the same, and paying reasonable Fees for Writing, not exceeding Five Shillings for the Copy of an Indictment; and that every such Person so Accused, Indicted, Arraigned or Tried, &c. shall be admitted to make his full Defence, by Council learned in the Law, and to make any Proof, by lawful Witness,

or

or Witneſſes, who ſhall then be upon Oath. And in caſe any Perſon ſo Accuſed or Indicted, ſhall deſire Council, the Court before whom he ſhall be Tried, ſhall aſſign him ſuch Council as he deſires, not exceeding Two, who ſhall have free Acceſs to him at ſeaſonable Hours.

II. After the ſaid 25th of *March*, no Perſon or Perſons ſhall be Indicted, Tried, or Attainted of High-Treaſon, whereby Corruption of Blood may be made, or of Miſpriſion of ſuch Treaſon, but by the Oathes and Teſtimony of Two lawful Witneſſes, either both to the ſame Overt-Act, or One to One, and the other to another Overt-Act of the ſame Treaſon, unleſs the Party willingly, in open Court, confeſs the ſame, or ſtand Mute, or refuſe to Plead, or peremptorily Challenge above Thirty Five of the Jury.

III. Provided any Perſon Indicted of the Treaſons or Miſpriſions of Treaſons, aforeſaid, may be Outlawed, and thereby Attainted, and in Caſes, when, by the Law, after ſuch Outlawry, the Party Outlawed may come in and be Tried, he ſhall, upon ſuch Trial, have the Benefit of this Act.

IV. Where two, or more, diſtinct Perſons, of divers kinds, ſhall be alledged in one Bill of Indictment, one Witneſs to One, and another to the other, ſhall not be deemed two Witneſſes within the meaning of this Act.

V. After the ſaid 25th of *March*, no Perſon ſhall be proſecuted for any ſuch Treaſon, or Miſpriſion, as aforeſaid, that ſhall be committed in *England*, *Wales*, or *Berwick*, after the ſaid 25th of *March*, 1696. unleſs the Indictment be found within three Years after the Offence committed. And none ſhall be proſecuted for any ſuch Offence, done before the ſaid 25th of *March*, unleſs Indicted thereof within three Years after the ſaid 25th day of *March*.

VI. Provided and Excepted, That any Perſon, deſigning and attempting any Aſſaſſination on the Body of the King, by Poiſon or otherwiſe, may be proſecuted at

at any time, notwithstanding the said Limitation. And all Persons, Indicted for such Treason, and Misprision of Treason as aforesaid, after the said 25th of *March*, shall have Copies of the Jurors, who are to Try them, two days at least, before their Tryal. And all Persons so Indicted, shall have like Process to compel their Witnesses to appear for them, as is usually granted for Witnesses against them.

VII. No Evidence shall be admitted of any Overt-Act, that is not expressly laid in the Indictment.

VIII. No Indictment for any of the Offences aforesaid, nor any Process, nor Return thereupon, shall be quashed on the Motion of the Prisoner, for Mis-writing, false or improper Latin, unless Exception for the same be made by the Prisoner, or his Counsel, before Evidence given in Court. Nor shall any Mis-writing, &c. after Conviction, be cause to Arrest Judgment; yet any Judgment given upon such Indictment, may be Revers'd upon a Writ of Error, in the same manner, as if this Act had not been made.

IX. Upon the Trial of any Peer or Peeress for Treason, or Misprision, all the Peers, who have a Right to Sit and Vote in Parliament, shall be duly Summoned Twenty days at least, before such Trial, to appear at such Trial, and Vote at the same, every such Peer first taking the Oaths in the Act of Parliament, made 1 *W.* and *M.* and also subscribing and repeating the Declaration mentioned in the Act made 30 *Car.* 2.

X. This Act not to extend to any Impeachment, or other Proceedings in Parliament: Nor to any Indictment of High-Treason, nor any Proceedings thereupon, for Counterfetting His Majesty's Coin, His Great Seal, Privy-Seal, Sign-Manual, or Signet.

Directions

Directions for Drovers, Badgers, Butchers, Inholders and Tanners, &c.

NO Licenſe ſhall be but in open Seſſions, for Drovers, Badgers, &c. A Drover is meant here, one that Buys Cattle in one place, and carries them to another to Sell. A Badger, is one that Buys Corn, or Victuals, in one Place, and carries it into another. Either of theſe, ſo Trading, muſt be a Married Man, and a Houſeholder, Thirty Years or upwards, and Licenſed, under the Penalty of Five Pounds, by 5 *Edw.* 6. chap. 14. Alſo he muſt have dwelt three Years in the County, Selling in open Fair, or Market, for Proviſion of Houſes, not Prohibited to Badgers, Licenſed by 5 *Edw.* 6. againſt Ingroſſing; and theſe muſt give Bond not to Foreſtall, nor to buy Corn out of Fair, or Market, under the Penalty of Five Pounds, unleſs ſo Limited by ſpecial Words in the Licenſe.

The Moiety of theſe Forfeitures upon Fore-ſtalling, due unto the Party Informing upon the Statute of Fore-ſtallers, is to be Levied by *Fieri Facias*, or *Capias*, to be Awarded by the Juſtices of the Peace, *Lamb.* 548.

Traders in Butter and Cheeſe prohibited in open Seſſions from Buying, if they do, are ſubject to the Penalties in the 3d and 4th of *Edw.* 6. chap. 12. and the 5th and 6th of *Edw.* 6. chap. 14. Notwithſtanding they extend not to ſuch Traders, Free-men of *London*.

None ſhall Ingroſs Oak-Bark, under Penalty of Forfeiting it, 1 *Jacobi* 21. So of Hides coming to Market, nor buy, except of the Owner of the Beaſt, to be Spent in his Houſe, under the Forfeiture of 6 *s.* 8 *d.* for every one: Except out of 3 *Edw.* 6. Barly or Oats, to be made into Oat-meal. So things belonging to Butchers, Fiſhmongers, Poulterers, ſold again at reaſonable Rates. So Corn, Cattel, &c. reſerved in a Leaſe taken

Also Wine or Victuals, by Inn-keepers; dryed Fish, Corn, Butter, and the like, by Licensed Badgers, &c. So Provision for a City, Shipping, Castles or Ports. So Fish brought by Persons dwelling within a Mile of the Sea: So Wine, Oyls, and Forreign Victuals, (Fish, and Salt-fish excepted.) Excepted out of 3 and 4 *Edw.* 6. and 5 *Edw.* 6, chap. 14. Butter and Cheese bought by Free-men of *London*, and sold again in the Liberties of the said City, Borough of *Southwark* and *Westminster*.

A Butcher using the said Craft, and also the Mystery of a Tanner, loseth for every day 6 *s.* 8 *d.* 1 *Jacobi* chap. 22. *Lamb.* 462.

Any Butcher that Gasheth, Slaughtereth, or Gatteth the Hide of the Ox, or Steer, or Bull, or Cow, so that it is Impaired, loseth 20 *d.* or that Wetteth, or Watereth any Hides, unless in *June*, *July*, or *August*, or putteth to Sale any putrified or rotten Hides, for every one of them, loseth 3 *s.* 4 *d.* *Ibid.*

A Tanner using also the Mystery of a Shoo-maker, Currier, Butcher, or any other Artificer, Using, Cutting, or Working in Leather, loseth the Hides and Skins Tanned. *Ibid.*

None shall Forestall any Hides coming to a Fair, or Market, except such as kill for the Provisions of their House, on Penalty of 6 *s.* 8 *d.* for every Hide.

None may buy, or contract for, or bespeak any rough Hides, or Calve-skins, but only a Tanner, or Tawer of Leather, except Salt Hides, for the necessary use of Ships, on Penalty of 6 *s.* 8 *d.* for every Hide so bought, or contracted for, 1 *Jacobi* 22. *Lamb.* 463.

None may buy Tanned Leather, or Wrought, but such as will convert them into made Wares, except Necks, and Shreads, of Sadlers, and Girdlers, upon Penalty to lose the said Leather, 1 *Jac.* c. 22. *Lamb.* 463.

All sorts of Spices and Merchandizes Garblable in the City of *London*, and the Liberties thereof, shall, for the usual Fees, be Garbled by the Garbler, or his Deputy, before they be sold, upon Penalty of the Forfeiture

Forfeiture thereof, or the Value ſold for, and ſo if afterwards mixed with Garbles, 1 *Jac.* c. 19. *Dalt.* 131.

A Tanner putting to Sale any Inſufficient Leather, not throughly Wrought and Tanned, or not well and throughly dryed, and the ſame ſo found by the Tryers appointed, 1 *Jacobi*, c. 22. loſeth ſo much as is Inſufficient, *Lamb* 464.

A Fore-ſtaller is a Party, either he or ſhe who buys, or contracts for any Victuals, or Wares, before they come to the Fair, Market, or Port, or moveth any Party to Enhannce the Price, and not to bring ſuch Victuals, or Wares, to any Market, Fair, or Port, *Lamb.* 450. Of which the Party being Convicted before the Juſtices of the Peace at the Quarter-Seſſions, by the Examination of two Witneſſes, or a Preſentment of Fore-ſtalling within two Years, for the Offence the firſt time, ſhall loſe the Goods, and be Impriſoned two Months, without Bail or Mainprize; for the ſecond Offence, loſe double the Value of the Goods, and be Impriſoned for the ſpace of Six Months; for the third Offence, to forfeit all their Goods, ſtand in the Pillory, and be Impriſoned during the King's Pleaſure, 5 *Edw.* 6. c. 14. *Dalt.* 87. *Lamb.* 576.

The Garbler of *London*, his Deputy, or Aſſign, in the Day-time, may enter any Houſe, Shop, or Warehouſe, to ſee if the Wares, *&c.* be Garbled; if not, to cleanſe them, and Forfeitures of this kind to go to the King and Informer, 1 *Jac.* c. 19. *Dalt.* 131.

All Bread, called Horſe-bread, muſt be of a lawful and ſufficient Size, according to the Price of Corn, as it is at a Rate in the Neighbouring Markets at that time, according to the 21 *Jacobi* 1. c. 21.

An Inn-holder, or Oſtler in a Thorow-fare Town, Corporate, or Market-Town, being a Baker, and one that hath been an Apprentice thereto ſeven Years, may make Horſe-bread within his Houſe. *Ibid.*

An Inn-holder in a Corporation, or Market-Town, where there is a common Baker, that hath been an Apprentice therein Seven Years, may not make Horſe-

Horse-bread within his House, 32 *Hen.* 8. chap. 14. 21 *Jac.* c. 22.

Directions for Coroners; His Fees, &c.

A Coroner's Office is very Ancient, and has been, and yet is, held in high Esteem; for the Lord Mayor of *London* is held to be Coroner there, 2 *Cro.* 531. And the Lord Chief Justice of the King's Bench is Sovereign Coroner of all *England*, 4 *Co.* 57, *b.* And he upon view of the Body of one killed in open view, as a Coroner, may make a Record returnable in the *King's Bench.* 1 Ibid.

But to come nearer to the intended Purpose, amongst other Matters, It is the Coroner's Business to view the Bodies of such as come to Casual Deaths, make away themselves, or are made away by others, or suspected to be put out of the World by a violent Death, or Dying Languishing in Prison, where there may be any Suspicion the Party dyed not Naturally, but by hard Usage, Starving, or that the Imprisonment caused his Death, *&c.* For he is to know, and certifie, how the King came to lose a Subject.

He is, says 3 *Inst.* Fol 129. to have *Visum Corporis* of a Prisoner dying in a Gaol, by reason of Duress. And the Jury or Inquest, before the Coroner, is to be of Persons within the four next adjacent Villages, made by the Bayliffs or Constables, and no Challenge lies to any of them so legally Summoned on the Inquest, 1 *Cro.* 135. And upon a View of the Body, and a strict Examination how the Party came by his Death, they must give in their Verdict to the best of their Judgment, according to the Evidence or other Matters appearing to them, whether it be *Felo de se*, to be Killed or Drowned himself, *&c.* or Died by the Hand of other Person or Persons, or by the Fall of a House, Wall, Timber, Kick of a Horse, or any other Matter

or Thing that brought the Party to an untimely End; and the Coroner being so satisfied, he is to give his Warrant for the Burial of the Party, according as it shall be found upon Verdict, and an Indictment may be grounded thereon, against such Party or Parties as shall be found concerned. And in this case he has Power to commit and bind over Persons accused before him of Murther, or the like, as he sees cause. And for doing his Office of one Slain or Murthered, he may lawfully take 13 s. 4 d. of the Slayer or Murtherer; and if he have not neither of the Town where the Murther was committed, or the Murtherer suffered to escape. 3 *Hen.* 7. c. 1. *Lamb.* 434.

A Coroner refusing to do his Office of one Slain by Misadventure, without Fees, loses 40 s. 1 *Hen.* 8. c. 7. *Lamb.* 434.

Writs shall be awarded to the Coroner, where the Sheriff is Party. The Writ of Covenant in a Fine, *Venire facias*, &c. 1 *Cromp.* 416.

One Person may be *Coroner* of the King's House [Hostel] within the Verge, and of the County too, 4 *Co.* 46. *B.* But where there are several, one cannot meddle within the other's Jurisdiction. *Ibid.*

Coroners, as Ministers, must all joyn, 4 *Co.* 57. *B.* A *Coroner*, to whom a Writ of Estrepement is directed, is to provide against Wast, by taking *Posse Comitatus*. *H.* 7. c. 85.

An Appeal, or an Accusation, by an Approver, is to be entred before the *Coroner*. 3 *Inst.* 129.

A *Coroner* may be removed by being *Minus Idoneus*. 5 *Co.* 58. *B.*

A *Coroner* concealing, and not doing his Office, through Fear, or for Prayer, or Affinity, &c. shall be Fined and Imprisoned for a Year, or three Years, if he cannot pay the Fine, by 3 *Eliz.* So of other Officers.

Coroners ought to certifie their Inquisitions at the general Gaol-delivery, and not at the Sessions, 1 and 2 *P.* and *M.* 13. *Lamb.* 365.

Coroners

Coroners being Parties to the Exigents and Judges of the Outlawry, ought to be present at the Sessions. *Ibid.*

Coroners are Conservators of the Peace, and may in some cases commit Men to Prison. *Ibid.*

There lies no Traverse to an Indictment before the Coroner *super visum corporis.* 3 *Inst.* 55.

Coroners may be convicted of Offences against the Statute, 1 *Hen.* 8. c. 7. by Examination of Witnesses, and touching Extortions, or not executing their Office before the Justice of Peace. *Cro.* 130. *h. Lamb.* 439.

Coroner exacting above a Noble for the View, and 2 *s.* for his Clerk, Fined 40 *s.* See 1 *Inst.* 149.

Dead Bodies.

The Law, says *Kastal*, is, if a Man or Woman, *&c.* be Wounded, and thereby in Peril of Death, the Party that did it, or was helping in doing it, being apprehended, may be committed and kept in Custody, till it be perfectly known by the Testimony of Skilful Persons, whether the Wounded Party will Live or Die of those Wounds or blows given; and if he Die, the *Coroner*, upon view of the Dead body, shall enquire of him, or them that have done the Fact, whether Man or Woman, and take the Names of them that were present as Witnesses, or any otherways knowing of it. Also he shall take especial notice of the Abettors and Concealors in, or towards the Fact, or any way therein concerned, and so found, to inrol and certifie the same.

The *Coroner*, according to his Inquest, shall give in their Verdict, if there be cause; for he is to take care to prosecute the Offender or Offenders, if the Relations of the Deceased or others refuse, or are slack in so doing; so that if any Man, *&c.* be Slain or Murthered, thereof the Slayers, Murtherers, Abettors, Maintainers and Comforters may be Indicted, and brought to Arraignment and Tryal of the Issue, whether they are Guilty of the Murther, Manslaughter, *&c.*

or not Guilty, which may be done any time in a Year and a Day after the same Felony and Murther committed, which must be dated from the time of the Wounding or beating, not from the time of the Dying, if the Party Languish, and live any time after, though somewhat considerable, as a Week, a Month, or more.

And the Wife, or Heir of the Person so Slain, or Murthered, as the Case requires, may Commence his, or her Appeal, in proper Person, any time within the Year after the said Felony done before the Sheriff, and Coroner of the County where the said Felony and Murther was done, or before the King in his Bench, or Justices of Gaol-delivery. And the Appellant in any Appeals of Murther or Death of a Man, &c. where Battle by the Course of Common-Law seeth not, may make their Attorneys, and appear by the same.

And the said Appeals, after they be commenced, may be proceeded in to the end of the Suit and Execution.

If a Murtherer, or Man-slayer, escape, the Justices of the Peace have power to enquire of such Escapes, and to certifie them in the *King's-Bench*, and that after the Felony found; the Coroners deliver their Inquisitions before the Justices the next Gaol-delivery in the Shire, or County, where the Inquisition is taken; and they are to proceed against such Murtherers, if they be in Gaol, or else certifie the Inquisition in the *King's-Bench*, or as it is worded, put the said Inquisition before the King in his *Bench*.

All such Coroners as are Remiss in their Office, or Duty of their place, and make not their Respective Inquisitions upon the view of the Dead body, and certifie not according as aforesaid, is ordained, every Coroner, for such Offence, Forfeits to the King 5 *l.* by 3 *Hen.* 7. c. 1.

And now, that the Coroner may not be ignorant what is Murther, I shall briefly lay it down in general, and many material Particulars.

Murther,

Murther, when Willful, &c.

The Crime of Murther is, when a Man or Woman, upon Malice Propenſe, Precedent, or Fore-thought, doth Feloniouſly Kill another living within the Realm, or under the Protection of the King, whether openly, or privately done, or whether the Party Slain, be *Engliſh*, or an *Alien*, Lamb. 237. Dalt. 342. Cromp. 21. a. Num. 1. Clergy taken away, 1 *Edw.* 6. And in this caſe Killing ſhall have Relation to the Death, and not to the Stroak. 4 *Coke* 42. *Crompt.* 21. *a.* Num. 1.

Malice is either expreſſed, *Crompt.* 21. *a.* *Dalt.* 241. or implied, *Lamb.* 239.

Malice Expreſſed, is in a Caſe where it is known there is Malice between the Parties, *Crompt.* 21. *a.* and is apparent, and where there is a preceding Falling out, or lying in wait, or Time and Place appointed, *Lamb.* 238. *Dalt.* 343.

Malice Implyed, is to be taken where a Man or Woman, *&c.* is killed ſuddenly without Defence, *Crompt.* 21. *a.* Numb. 2. *Dalt.* 343. As one buſie at Reading, or going over a Stile ſuddenly Killed by a Party, or where one killeth another without Provocation, one Stabbed, and not having a Weapon drawn, Dying in ſix months, theſe are Murther, and ſo noted by *Dalton*, *Lambert*, *Crompton* and others, and the Statute of Stabbing, 1 *Jac.* 1. c. 8. *Dalt.* 343.

To kill an Officer known in Executing Proceſs, *Dalt.* 343.

So to kill an Officer unknown, if he ſhew his Warrant; and if an Officer hath the King's Writ or lawful Warrant, though the Proceſs be Erroneous in Awarding, or one Proceſs taken for another, and the Officer be ſlain in Executing it, it is Murther, *Dalt.* 343. 2 *Cro.* 280. 9 *Co.* 68. *Lamb.* 240. So though the Arreſt were made in the Night-time. But where the Arreſt is Tortious, or where an Officer, not known, ſhews not his Warrant, or the Arreſt be made on the Lord's-

day, uſually called *Sunday*, (by Stat. *Car.* 2.) it is but Man-ſlaughter. *Ibid.*

An Officer Whipping or Branding to Death, is Murther, 344. A Rioter killing an Officer, or Aſſiſtant coming to Suppreſs a Riot, it is Murther in the Rioters, *Dalt.* 443. *Crompt.* 23. *B. Numb.* 28. *Lamb.* 241.

It is Murther to kill a Magiſtrate or Miniſter of Juſtice, in Executing his Office, or in keeping the Peace, *Crompt.* 25. *B. Numb.* 51. *Dalt.* 343.

One Aſſaulting another, after the Aſſault flyeth to the Wall, and then killeth the other, it is Murther; for he ſlew him in the ſaid Malice wherein he did Aſſault him, *Lamb.* 239.

One Condemn'd to Die, is killed by a private Perſon without Warrant, or by the Judge who Condemneth him, or by the Officer contrary to the Judgment, it is Murther, *Dalt.* 340. *Lamb.* 240. 5 *Eliz.* 1. So a Phyſician or Surgeon, having Malice, applies a contrary Medicine, of which the Patient dies, *Dalt.* 344.

A Thief killing a True Man reſiſting, it is Murther of Malice Propenſe, for here Malice is implyed by the Law, becauſe the Thief came purpoſely to do an ill Act, though not purpoſely to kill the Man, See *Lamb.* 241. *Dalt.* 344. *Crompt.* 22. *a. Numb.* 13. 9 *Co.* 67.

A Perſon carrying his Sick Father, *&c.* and laying him in the cold Froſt *&c.* ſo that he dies, is Malice; for by it, the Law preſumes, he intended his Death. So a Strumpet, covering her Child with Leaves in the open Way, *&c.* to hide it, and a Beaſt tramples on it, and kills it, or a Cart goes over it, *&c.* *Lamb.* 240. *Dalt.* 352. and of the former, *Dalt.* 344. *Lamb.* 740. And many the like Caſes, too long to be here ſet down, where there is Malice fore-thought, Prepenſed, or that the Law preſumes, or implies it to be Malice in the Party who kills another, or ſets on another to do it, by Aſſaſſinating, *&c.*

Homicide,

Homicide, Man-slaughter, Felo de se, &c.

Homicide, is either killing himself, *Felo de se*, or by another; and *Felo de se*, a Man by killing himself, Forfeits to the King his Goods and Chattels, Real and Personal, and his Debts due by Specialty, *Dalt.* 341. But no Lands or Blood Corrupted, *ibid.* But his Goods are not forfeit till his Death, *ibid.*

Homicide is killing of a Man by Man, *Dalt* 339, 349. *Ex vi Termini* comprehends Treason, Murther, &c. It is no difference whether the Party Slain be a *Denizen*, *Alien*, or *English* Man, if he lives under the King's Protection, *Dalt.* 340. *Lamb.* 237. *Crompt.* 221. a. *Numb.* 1.

To kill one Attainted for Treason or Felony, or Outlawed for Felony, or Attainted in Premunire is Felony, by 4 *Edw. Stamford.* 13. *Dalt.* 342. *Crompt.* 24. a. *Numb.* 39.

An Infant, *or non Compos mentis*, does not forfeit, but a Lunatick killing himself out of his Lunacy, doth forfeit his Goods, *Dalt.* 340.

Homicide of another, is either Voluntary, or Involuntary; Voluntary is Murther, *vide* Murther, or Man-slaughter.

Man-slaughter is when two Men, &c. fight together on a sudden without precedent Malice, and one of them kill the other, *Dalt.* 349. *Lamb.* 248. *Crompt.* 16. a.

Man-slaughter is either by Chance-medley, or *se defendendo*, forfeiture House and Goods.

Chance-medley is Felony, but may have Clergy, *Dalt.* 349.

One Fighting breaks his Weapon, another standing by puts one into his Hand, or otherways lends it him, and with it he kills another, it is Man-slaughter in the Lender, *Dalt.* 134. *Crompt.* 16. b. *Numb.* 12. *Lamb.* 252.

The Servant Fighting in his Master's Defence, tho' there were Malice in the Master, and not told to the Servant, and one be killed, *Lamb.* 248.

So a Stranger taking part, *Lamb.* 238. is Chance-medley, *Dalt.* 348.

If two that were in Malice are Reconciled, and fall out upon a new Occasion, and is killed, it is Manslaughter only, *Dalt.* 350. *Lamb.* 250.

Se defendendo, is where one killeth another in the defence of himself, or his, thereby to save himself, or his Possessions or Goods, or some other Person which he is bound to defend from Peril, and it is either against a Felon, Murtherer, Thief, or Loyal Subject, *Dalt.* 356. *Lamb.* 352.

Against a Loyal Subject, if he be Assaulted by another Man, he must fly so much as he may, till he be letted by some Wall, or other material Hinderance, that his necessity of Defence may seem Inevitable; and he shall be committed till the time of his Trial, loose his Goods, and Sue out his Pardon, *Lamb.* 253. *Dalt.* 35. It is not material if he strikes again before he gave any deadly Wound, if he flies to the Strait, *Dalt.* 357. 358.

If a Man fly to a Wall, and hold out his Weapon, if the Pursuer run upon it and is killed, it is *se defendendo*, and forfeiteth his Goods, *Crompt.* 28. *n.* *Numb.* 7. *Dalt.* 349. But if he had fallen on the Ground, and the other fall on it and kill himself, there is no loss of Goods; for he could not fly, and the Slain is in a sort *Felo de se*, ibid. *P. R.* 122. *b. Stam.* 16. *a.*

If a Man fall to the Ground, there his flying to a Strait is not necessary, because he might be there inevitably killed, if he did not defend himself, *Dalt.* 347. 358.

An Officer or Minister of Justice Executing his Office, is not bound to fly, *Dalt.* 358. *Coke* 99, 98.

If a Servant Kill one that Robb'd or Kill'd his Master, so it be done presently, or in defence of his Master's Person or Goods, if he could not otherways have avoided the same, *Dalt.* 358. *Crompt.* 28. *Numb.* 2.

To Shoot at one that comes to Burn a Man's House, is justifiable in him or his Servants, *Dalt.* 356, *&c.*

In the defence of the Possession of a Man's Goods, or House, he may justify to Beat him, but may not

Kill

Kill him, though the Party come wrongfully to take his Goods, unless he be a Thief, *Dalt.* 158, *&c.*

To Kill a True Man in Defence of House, Goods, or Land, is Man-slaughter, *Dalt.* 358. *Crompt.* 27. *b. Numb.* 4.

Involuntary Homicide is either by Misadventure or Necessity.

The first is, when a Man, doing any lawful Act, killeth a Man: This is not Felony of Death, but he shall have his pardon of course for Life, and Lands, but forfeiteth his Goods, *Lamb.* 254. *Dalt.* 351.

For Example: A School-master, Father, Mother, or Master, Correcting a Child, Scholar, or Servant: Moderately Shooting at Pricks, Butts, or lawful Marks: A Work-man casting Tiles, Timber, or Stone from off a House, or any thing from a Cart, and giving warning, or doing other lawful things, giving warning.

But the killing of a Man in doing any unlawful Act without evil Intent, is Felony; as shooting Arrows, casting Stones into Highways where People resort, or unto other places of usual resort, *Dalt.* 352.

If a Man be slain by the fall of a House or Tree, by a Beast, *&c.* any Party, by a wilful Default, causing it, it is Felony, *Dalt.* 251.

The thing that causes the Death, is a *Deodand*, and forfeited to the King, *Dalt.* 353. *Crompt.* 35. *a.*

Deodands are not Forfeit, till the matter be found on Record.

If a Man be slain under fourteen Years of Age, nothing is forfeited as a *Deodand*, *Dalt.* 353. *Lamb.* 215 *&c.*

CHAP. I.

The Office and Duty of a Constable. His Oath. The manner of executing the Warrants of a Justice of the Peace. His Office in Affrays, Arrests, Escapes, Hue and Cry, &c.

Oathes.

YOu shall Swear that you shall well and truly serve our Soveraign Lord the King in the Office of a Constable: You shall see and cause His Majesty's Peace to be well and truly kept and preserved so far as in your power lyeth: You shall Arrest all such Persons as in your sight or presence shall ride or go armed offensively, or shall commit or make any Riot, Affray, or any other Breach of His Majesty's Peace: You shall do your best Endeavour, upon Complaint to you made, to apprehend all Felons, Barretors, and Rioters, or Persons Riotously assembled, and if any such Offenders shall make resistance with force, you shall levy Hue and Cry, and shall pursue them till they be taken: You shall do your best endeavour that the Watch in and about your Hundred, be duly kept for the apprehending Vagabonds, Rogues, Night-walkers, Eves-dropp[illegible] Scouts, and other suspected Persons, and of such as go armed, and the like: And that Hue and Cry be duly raised and pursued, according to the Statute of Winchester, against Murtherers, Thieves, and other Felons: And that the Statutes made for Rogues, Vagabonds, and such other idle Persons, as come within your Bounds and Limits, be duly put in Execution: You shall have a watchful Eye upon such Persons as shall maintain or keep any common House, or place where any unlawful Game is, or shall be used, as also to such as shall frequent or use such places, or shall use or exercise any unlawful Games there or elsewhere, contrary to the Statutes. At your Sessions, Assize, or Leets, you shall present all and every the Offences done contrary to the Statutes of the 1. 4. and 21 of James the First, to restrain the inordinate Haunting and tipling in Inns, Alehouses, and other Victualling Houses, and for the repressing

Drunken-

Drunkenness: You shall there likewise true Presentment make of all Blood-shedings, Affrays, Outcries, Rescous, and other Offences, committed or done against the King's Majesty's Peace within your Limits: You shall once every Year, during your Office, present at the Quarter-Sessions all Popish Recusants within your Liberty, and their Children above Nine Years old, and their Servants, (viz. their Monthly Absence from the Church) 3 Jac. 1. chap. 4. You shall well and duly execute all Precepts and Warrants to you directed from the Justices of the Peace of the County, or Superior Officers: You shall be aiding to your Neighbours against unlawful Performances: In time of Hay or Corn Harvest, upon request, you shall cause all Persons meet, to serve by the day for the Mowing, Reaping, or getting in of Corn and Hay: You shall, in Easter Week, cause your Parishioners to chuse your Surveyors for the mending the High-Ways in your Parish or Liberty: And you shall well and duly, according to your Knowledge, Power, and Ability, do, and execute all other things belonging to the Office and Duty of a Constable, so long as you shall continue in the said Office.

By this Tenour of an Oath, a Constable may gain a considerable Light into what he is to do, in the Management and Execution of his Office, being as it were, an Epitome of what I shall hereafter set down more intelligibly and plainly to be understood: But this Oath is often administred in Abstract to a Petty-Constable, Tything-man, &c. So that what I now recite suffices.

The Petty-Constable, &c. his Oath.

YOU shall Swear, That you shall well and truly execute the Office of a Tything-man, of the Tything of D. (or Shadborough, &c.) His Majesty's Peace in your Person, you shall keep, and see it kept in others, as much as in you lyeth; in the Presence of the High-Constable, you shall be aiding and assisting to him, and in his Absence you shall execute his Office, according to your Power and Knowledge, till another be chosen in your place, or you be Legally Discharged. So help you God.

The

The High-Constables in their respective Hundreds are Conservators of the Peace at Common-Law, as are the Petty-Constables in their respective Towns and Liberties, and have a large Power to back and support them in the Execution of their Office, if they proceed within the Bounds of it; for it is so ordered, that if an Action be brought against a Constable, Headborough, &c. or their Assistants, for any thing done by reason of their respective Offices, they may plead the General Issue, and give the special matter in Evidence, 7 *Jac.* 1. chap. 5. 21 *Jac.* 1. chap. 12. *Wingate's* Abridg. Stat. Tit. Evidence, &c. And if it so happen, any Action be brought against one or more of them, it is so provided, that it shall be laid in the County where the Fact commenced; and if the Verdict pass for the Defendant, he is to have double Costs; and this to be recovered, as other Defendants recover their Costs, by 7 *Jac.* 1. chap. 5. 21 *Jac.* chap. 12. *Wing.* Abridg. Stat. Tit. Evidence.

For indeed a Constable legally chosen, is compelled to serve the Office, being a fit Man, able of Body, and of Substance; and it would go hard, if, for every trivial slip, he should run the Risk of being ruined by Vexatious Suits; for if a Constable, &c. Legally elected to the Office, do refuse to serve and take the Oath, (unless a Quaker, and then, according to the late Statute for taking the Oaths, &c. his Affirmation will hold good in lieu of an Oath) he may be bound over by the Justices to the next Sessions or Assizes, and there prosecuted for a Contempt.

Serving Warrants.

If a Warrant be brought to a Constable, or other Sworn Officer, his safest way is to charge the Party making the complaint, to assist him in the King's Name, and shew him the Party or Parties mentioned in the Warrant, unless himself be well acquainted with him, or them, lest a Mistake, by the Names agreeing, may run

run himself into an Error, in taking the wrong Party: And if he be a Sworn known Officer, he may refuse to shew his Warrant; but must declare to the Party he goes to Arrest, what is therein charged against him: But it is otherwise where a Warrant is given to be served by one who is not a known Sworn Officer; as a Justices Servant, &c. for there, upon demand, he must produce the Warrant, or the Party on whom it is Served, may refuse to obey, and lawfully Resist.

If a Constable Arrest a Man or Woman in the King's Name, pretending he has a Warrant, and at that time he has none, but presently goes and gets one, the Party may bring an Action of false Imprisonment against him, and recover some Damage with Cost, as shall be Awarded, *Cro.* 6. 69.

If a Constable have a Warrant against *A. B.* the Son of *L. B.* and he takes into his Custody *A. B.* the Son of *R. B.* though he happen to be the Offender against whom the Complaint was made, yet he goes from his Warrant, and doing thereby an unjustifiable Action, there lies an Action of false Imprisonment against him, 10. *E.* 4. Fol. 121.

If a Constable Arrests a Man with a Warrant from a Justice of the Peace, and having him in Custody, takes Bail to come again another time; by his so dismissing him, the Warrant is void, and cannot be served again. But if a Rescue be made, or the Prisoner escapes without the Officer's consent, then upon fresh pursuit he may take him with the same Warrant as often as he is rescued or escapes, and may pursue him into another Town or County, though he be out of sight. *Crompt.* 214. and 184. *Cro.* 53. 214.

If a Justice send a Warrant for a matter wherein he hath Jurisdiction, though he goes beyond his Authority, yet the Officer is bound to obey it, and his producing his Warrant saves him harmless, the Justice being then to answer for it: But on the contrary, if a Justice Issues out a Warrant for a matter out of his Jurisdiction, where he is no Judge of the Cause, the Constable

Constable is not bound to obey it; for he is bound to take notice of the Jurisdiction and Authority of the Judge; and where the Justice, as is said, can be no Judge of the matter charged in the Warrant, he is no more bound to obey him, than if he had no Commission, 14 *H.* 8. *Cr.* 10, 76.

If a Warrant be directed to an Officer, to serve on a Person for ordinary matters, the Warrant not specifying the Cause, but only to answer to all such matters as shall be objected against him or her; this is held to be an illegal Warrant, and the Officer that executes it, lies liable to an Action of false Imprisonment, *Cok's Institutes, Part* 4. *Tit. de Franqua. Prison.* However for Reason of State Warrants for Treason, or such as are granted by the Lords of the Privy Council, Secretaries of State, or the Lord Chief Justice of *England*, these need not set forth the Cause, by reason they are usually granted on matters of great Importance, where Secrecy is required.

If any Party be taken by a Legal Warrant, and make Resistance; the Constable in the King's Name may command Assistance; and if the Resisting Party be beaten, or wounded, the amends is in his own hand, for opposing the King's Authority; but if the Constable or any of his Assistants, be beaten or wounded, the [illegible] is Indictable, as likewise liable to an Action at Common-Law; and if any of them die of the Beating and Wounds within twelve Months, it is Murther.

Persons refusing to assist a known Sworn Officer, charging them in the King's Name, lyes liable to be bound over to the Sessions, and Fined at the Discretion of the Justices; and the like for those that shall contemn or abuse a Justices Warrant, by tearing, treading under Foot, or any way defacing of it, &c. over and above being bound to the good Behaviour; for it is a Contempt against the King's Process, *Crompt.* 144.

Escapes.

Affrays.

If a Constable be present at an Affray, he may command the Standers-by, in the King's Name, to assist him in keeping the Peace, and upon Complaint of the Constable, the Inquest may Indict the Party refusing, and be Fined by the Justices at their Sessions, for refusing to do his Duty.

If a Constable, or other such like Officer, be present when one Man or Woman Assaults another, or with violent words threatens to beat or kill any one, and be in a Fury, ready to break the Peace, In such case the Constable, Headborough, &c. may commit the Offenders to the Stocks, or some other safe place of Custody, till he can carry them before a Justice, who may, upon Complaint, compel them to find Sureties for the Peace, or good Behaviour; and for want of such Sureties, commit them to Prison, 3 *Hen.* 4, 9 & 10. *Rast.*'s Elements of the Law, &c.

Where any Affray is like to be, the Constable in the King's Name may command them to depart on pain of Imprisonment; and if they refuse, he may take them into Custody, or Indict such as refuse, if any harm be done, at the next Sessions: And if a Constable be present at an Affray, and does not his endeavour to prevent it, and seize the Offenders, he lies liable, upon a Presentment of the Jury, to be Fined, *Dalton*'s Justice of the Peace, *c.* 1. *fol.* 4, 5.

A Constable may assist the Affrayers after Proclamation made to depart, and compel them to it by force; and if he, or any of his Assistants, be wounded, they have their Remedy by Statute and Common-Law, and if Killed, or Dying of their Wounds, it is Murther in the Affrayers, *Lamb.* 135. 1 *Hen.* 7. 7. 3 *H.* 7. 10.

If the Affrayers be in a House, the Doors locked or bolted, the Constable may break them open to part the Affray, and keep the Peace, though none have taken hurt; and if they fly into another House, the Constable,

Constable, upon fresh pursuit, may break into that House to apprehend them, and so till they shall be taken, *Lamb.* 125, 7 *Edw.* 3, 19.

If any be dangerously hurt in an Affray, though the Constable be not present at the Affray, yet may he seize the Offenders, and carry them before a Justice of the Peace, who is to require Sureties of them, or the Wounds being supposed Mortal, to commit them to Prison, till it be certified by Chyrurgeons or Physicians, whether the Party will live or die, *Dalt. Just. P.* c. 9. fol. 33.

After the Affray is over, the Constable not being present at it, cannot seize them without Warrant, unless some one be dangerously Wounded, and much Blood drawn. If Affrayers escape into another County, or Franchise, a Constable, upon fresh pursuit, may seize them there, and carry them before a Justice of the Peace of the same County, to find Sureties for the Peace; but then he must see the Affray.

All Contests are not properly Affrays; for to make it such, there must be some Blows given, or offered to be given; for hasty words will not warrant an Affray, unless they threaten to Beat, Kill, or Wound one another; and in such case a Constable may apprehend the Offenders, and carry them before a Justice, to find Surety for the Peace; and yet such threatning words are not properly taken for an Affray, *Dalt. Just. P.* c. 8. fol. 34. 38 *Hen.* 8.

Arrests and Escapes.

Upon a Constable, or any Sworn Officer of the Peace, having Arrested a Felon, or taken any Person into Custody on Suspicion thereof, and he is conniving at his Escape, or giveth him leave to go out of his Custody at Liberty, so that he does escape, it is no Felony in the Prisoner, but it lies upon the Constable, and he must answer for it; but if the Prisoner accidentally escape, without the Constable's consent, he is then

then Guilty of the Felony, and the Constable Finable for his Negligence.

If a Constable, by his Negligence, let a Prisoner, in his Custody, have opportunity to make away with himself, by Stabbing, Drowning, or any violent Death he is Fineable, *Dalton's Justice of the Peace*, c. 16. fol. 272.

Where a Felony is committed, and one is taken by a Constable, on Suspicion of committing it, though afterward the Constable be very well satisfied he is innocent, yet may not he discharge him without carrying him before a Justice of the Peace; for being once taken into Custody, he must be delivered by due course of Law: Nor may a Constable suffer the Compounding any Felony, for if it be done after he Arrests the Party, or before, he is to declare his Knowledge of such Compounding before the Justice, or for conniving to extenuate the Fact, and set the Prisoner at Liberty, he is Fineable; and some hold he may be brought in as an Accessary.

A Constable may use all lawful Means to secure his Prisoner, as setting him in the Stocks, or putting Irons on him, if he be Unruly, till he can carry him before a Justice; or Pinion his Hands behind him with Cords, to prevent his escape in carrying him thither, or to Prison.

If the Gaoler will not receive a Prisoner of a Constable, where he is lawfully committed, he must not, however, let him go, but bring him back to the Town or Village where he was taken, or where the Constable dwells, and the Town where he was taken, shall be at the charge of keeping him until the next Gaol-delivery, to be raised by way of Tax amongst the Inhabitants, if the Prisoner has no Money or Goods to defray it; and in such case the Gaoler shall be punished by the Justices in their Sessions or Assize, for his Refusal and Contempt. If there be much Charge in carrying a Prisoner to Gaol, the Inhabitants where he was taken, may be obliged to contribute to it, to be

be Levied by such of the principal Inhabitants as shall be thereunto appointed at their Discretion.

Hue and Cry.

When a Hue and Cry is Levied and Issued out, whether for Robbery, Murther, &c. when it comes to the Hands of a Constable, Headborough, Tithingman, &c. They must forthwith make diligent Search in all suspected Houses, Barns, and Out-houses, and other Houses, at their Discretion, and all Places within their Liberty or Precincts, and have Power to stop any suspected Persons, as in search or pursuit they shall find or suspect to have done the Fact, comparing him or her, or their Horses, with the Description given in their Hue and Cry, and if cause be found to carry the Party before the next Justice of the Peace in the County where taken, there to be strictly Examined, where he or they were at that time of the Fact committed, and for the neglect of this Duty, the Officer lyes liable to be Fined by the Justices in Sessions, and search being diligently made, must without delay send to the next Constable or Officer of the Peace, unless the Party or Parties be taken who are known to have committed the Fact mentioned therein, *Dalt.* Just. P. c. 28. fol. 75.

Where a Robbery is committed in a Hundred, and the Hundred is sued for it, though the Damages are recovered against one or two of the said Hundred, yet they are not to bear the Charge, but the rest must proportionably contribute according to their Ability, and two Justices of the Peace, one to be of the Quorum, dwelling in or near the said Hundred, may set a Tax on every Parish within it, and then it is the Duty of the Constable or Tithingman of each Parish to settle the Gross Tax proportionably on the Inhabitants in particular, and may upon refusal of payment make Distress and Sale of Goods, delivering the Overplus upon due Appraisement to the Owner; and the Money collected

ollected is to be put into the Hands of the Justices, or ne of them that made the Rate, within Ten days af- r, according to 27 *Eliz.* ch. 13, &c.

If fresh pursuit on the Hue and Cry shall cease in ny Hundred, it is liable to pay half the Damages to e Hundred wherein the Robbery was committed, to recovered by Action in any of his Majesty's Courts *Westminster*, at the suit of the Clerk of the Peace for e County; and though in the mean time he die or e changed, the Suit shall not fall or abate; and when recovered, it is to be levied on the Inhabitants by y of Tax as the former, 27 *Eliz.* ch. 13.

If any one of the Robbers be apprehended and ought to Justice, and Convicted, it saves the Hun- ed their Money, because it is looked on they have ard to watching the Roads for the secure Travel- g of Passengers. Also when the Action is not ought within one Year after the Robbery commit-

The Robbery must be committed in the King's gh-way, between Sun-rise and Sun-set, and Oath de of it, with the Sum lost, before the next Justice the Peace, with all convenient speed. The Hue Cry thereupon issued out, must be made with rse ond Foot, or else it is held illegal, *Bract.* book 3. 191. *Dalt.* Just. P. fol. 133.

Whoso goes not Armed and fitly prepared at the mmand of the Sheriff or Constable, when the Hue Cry is issued out, (to Arrest the Robbers or Felons) r attainder may be severely Fined and Imprisoned, *Am.* 2. ch. 9. *Coke's* second part of Institutes, fol. 172.

Conservation of the Peace.

Though a Constable may do his Endeavour to keep e Peace, yet if it be broken, he cannot take Surety r it at the Request of any one, *H.* 7. fol. 18.

Before a Warrant of the Peace be served, the Con- ble, or other Officer, ought to acquaint the Party with

with it, and charge him, in the King's Name, to go along with him, to put in Sureties if required; and if he refuse so to do, then to compel him to do it; and if it be in an unseasonable time, that the Justices be in Bed, or not to be found, he may secure him under Guard, or in Prison, if he will be so Rigorous, till he can convey him before a Justice, and is not bound to run up and down from place to place with him, nor lose his time, in staying till the Prisoner can send for Sureties, but may immediately carry him before what Justice he pleases, and not submit it to the Prisoners Election, nor to that of the Party that make the Complaint, unless the Warrant be special, of which particular I shall speak more fully in another place.

If a Constable have a Warrant of the peace against a person to find Sureties, where the matter is palpable, the party having notice of it, may supersede it, by putting in Surety before another Justice, to answer the Complaint the next Sessions, and then if that Justice being of the same County, send a Supersedeas to the Officer to discharge farther Surety, and he notwithstanding Arrest the party to find Surety, or Imprison him, he may bring his Action of false Imprisonment against the said Constable, or for the like contempt of the Officer upon a Supersedeas out of Chancery, or the King's-Bench, for a Supersedeas is a discharge of the former Warrant, *Dalt.* Just. P. ch. 69. fol. 159.

Upon Notice given to a Constable, or other peace Officer, or if it be upon his or their own Knowledge, that a Man or Woman Adulterously cohabit together, or live in Fornication, being of Evil Report, he may seacrh any suspected House for them wherein he is informed, or knows they are in the Night-time, and there apprehend them and carry them before a Magistrate to find Sureties for their good Behaviour, 13 *H.* 7. 20. *Dalt.* Just. P. ch. 75. fol. 189.

If any one abuse or affront a Constable in the Execution of his Office, either by Word or Action, he may have him bound over to the good Behaviour for such

his Offence, and Fined before the Juſtice in their Seſ-
ions, as they ſee fit upon proof, &c. *Fitz.* 207. *Crompt.*
15.

All injurious Force and Violence uſed againſt the
erſon, Lands, Goods, or other Poſſeſſions or Chat-
ls of a Man or Woman, is held a breach of the peace,
hether it be by threatning Words, furious Geſtures,
bodily Force, *Dalt.* ch. 3. fol. 9.

Note, Upon any Diſputes in an Ale-houſe or Ta-
rn, &c. about paying the Reckoning, and the par-
s offer to make their Eſcapes without paying, if
ere be no Swords drawn, Beating, Wounding, or
ible breach of the peace, the Conſtable is not bound
go though ſent for, nor is it Warrantable for him
Arreſt and carry before a Juſtice, unleſs a Warrant
put into his Hand; for this is only a Debt, and the
rty aggrieved muſt bring his Action, for the credit
gave for the Victuals or Drink, &c. being freely
ivered by his conſent, and thoſe Conſtables this
y, may bring themſelves into Trouble, and only
laughed at by thoſe that ſet them on work, and
unted their Stalking-horſes.

No Warrant, Writ or proceſs ſhall be ſerved on
e Lord's-Day, commonly called Sunday, except for
ony, Treaſon, or the Breach of the Peace; for o-
rways the Service ſhall be void, and the Juſtices
y diſcharge the Warrant without examining the
tters, and the party ſerving it ſhall be obliged to
wer Damages, as if no Warrant had been to the
rty who is Arreſted, and detained by ſuch a Warrant
the Lord's-Day, 29 *Car.* 2. ch. 7.

CHAP.

CHAP. II.

The Constables Duty in Relation to the LORD'S *Day, Riots, Ale-houses, Inns, Weights, Measures, Watches, &c.*

Lord's-Day.

WHoever on the Lord's-Day is present at, or keeps any Shooting, Wrestling, Ringing of Bells for Pleasure, Bowling, Church-Ales, Wakes, Masks, or any Games, Sports, or Pastimes whatsoever, he shall forfeit 5 Shillings, if above the Age of 14, if under that Age 1 Shilling, to be paid by him or her that has the Government of the Party, to be levied by the Constable on Sale of Goods taken in Distress, by Warrant from a Justice of Peace, or Chief Magistrate, and for want of such Distress the Offender to be set in the Stocks for the space of 3 hours: And any Carrier going by way of Travelling with his Horse on this Day, or any Carrier, Waggoner, or Wayman going with any Cart, Waggon, Wayn, or Drover with Cattle forfeits 20 Shillings for every such Offence, to be levied by Distress and Sale of his or their Goods, charged, and duly convicted within 8 Weeks after the Offence committed, as in the Case of Butchers, and the Money shall be had to the use of the Parish where the Distress is first made; for though they pass through several Parishes, yet are they to pay but 20 Shillings for one Journey, 3 *Car.* 1. ch. 1. *Dalt.* ch. 50. fol. 134.

Dressing Meat in Inns, Cooks-Shops, and private Families, are not prohibited on the Lord's-Day, by the Statute of 29 *Car.* 2. And for the better Encouragement of the Mackrel Fishery, they are in the Seafon to be sold this Day, but before and after Sermon time only.

If any Bull-baiting, Bear-baiting, Enterludes, or other unlawful Games and Pastimes of the like Nature, be held in the Parish or out of the Parish on the Lord's-Day, upon Warrant to him directed, the Constables, &c. may levy 3 Shillings 4 Pence by Distress and Sale of the Offenders Goods, rendring the Overplus to the Owner, if any be; or Set the Party, for want of such Distress, in the Stocks by the space of 3 Hours, but then the Party offending must be questioned within the space of a Month after the Offence committed, 1 *Eliz.* ch. 1 *Dale*, Just. P. ch. 23. fol. 6.

None shall do any Work, by Labour or Business, on the Lord's-Day, Works of Necessity and Charity only excepted, but that the Offender, if above the Age of 14 Years or upwards, shall forfeit 5 Shillings. None shall cry and expose to sale any Wares that Day, on pain to forfeit them, except Milk, and that before 9 in the Morning, and after 4 in the Afternoon. No Drover, Higler, Horse-courser, Butcher, or their Servants, shall Travel on the Lord's-Day, upon pain of forfeiting 20 Shillings. No Person shall Travel on that Day on Horseback, or with Boat, or Wherry, unless on extraordinary Occasions, to be allowed by a Justice of the Peace, or Head Officer of the Place, upon Penalty of forfeiting 5 Shillings. No Hackney-Coachs to Travel that Day, unless such as are allowed by the late Act of his present Majesty King *William* 3. &c. for Licensing Hackney-Coaches, &c. 29. *Car.* 2. ch. And Penalties upon this Act are for the use of the Poor of the Parish where they are levied, or the Offence committed, saving the Justice, or other Head-Officer, may reward the Informer if he think fit, with a third Part. And further Note, That the Prosecution of this Act, must be made within 10 Days after the Fact committed.

If any Butcher Kill and Sell any Victuals on the Lord's-Day, or any one do it for him, the Constable, by Distress and Sale of his Goods, may levy 6 Shillings 8 Pence upon Warrant from a Justice, &c. But the

Complaint

Complaint or Information must be made within 6 Weeks, and the Party thereof Convicted before a Justice of Peace, Mayor, or Chief Officer, upon their own View, proof of two Witnesses, or the Parties own Confession; and they may, at their Discretion, gratify the Informer with the third part of the Penalty, 3 Car. 1. ch. 1. *Dalton's Just. P.* ch. 50. fol. 134.

Riots.

The Power of a Constable, in Disorders of this Kind, is very great, and it is his Business to be diligent in Suppressing them; as also that of the Sheriffs, and others of the King's Officers, by reason such Tumults are of dangerous Consequence to the Government, and many times, as it has been known, from small beginnings, broke into open Rebellions, and disturbed the Peace of the whole Kingdom; and therefore,

Note, Where three or more Persons shall Meet and Assemble themselves together, to the intent to do any unlawful Act with Violence or Force, against the person of another, his possessions or goods; as to beat, kill, or otherwise to hurt, or, without Authority, to Imprison a Man in his own House, or elsewhere. To pull down a Wall, Pale, House, Hedge, Ditch, or wrongfully to enter upon, or into the possession of another Man's House or Land, &c. Or without Right to cut or take away Wood, corn, Grass, or other Goods, or Unlawfully to Hunt in any warren, or park, or with Force or Violence do any other unlawful Act against the King's peace, to the manifest Terror of the people. And if they only meet to such intent or purpose, though they afterwards depart of their own accord, without putting their Intentions in Execution; it is nevertheless an unlawful Assembly, by reason their first Intention which occasioned them so to Assemble, was with an evil Design, *Bro. Tit. Riots* 4, 5. 6. 3. *Part Institutes*, fol. 176. *Dalt.* Just. P. ch. 85. fol. 217. *Stat.* 27 *Hen.* 2. ch. 8.

Ale-Houſes and Inns.

He that, without a Licenſe, ſhall preſume to keep an Ale-Houſe, ſelling Ale or Beer, forfeits 20s. to be levied by Diſtreſs and Sale of Goods, and converted to the uſe of the Poor of the Pariſh, and this to be done by the Conſtable and Church-wardens by Warrant, from a Juſtice of the Peace of the ſame County, and upon Diſtreſs and Sale, the Overplus to be returned to the Owner of the Goods if any ſuch remain, and a Conſtable, &c. refuſing, or neglecting to execute any ſuch Warrant to him directed, forfeits 40s. upon failure of Goods, to levy the Diſtreſs upon ſuch Ale-houſe-keeper; the Conſtable being impowered by the Warrant aforeſaid, may openly whip or cauſe the Offender to be whipped in his preſence; the Goods, upon Diſtreſs, are to be ſold in three days; the Offence to be proved before the Juſtice of the Peace who grants the Warrant; and the Juſtice, upon Default of the Conſtable, in executing his Office relating to the Premiſſes, may commit him to Gaol till he cauſes the Offender to be whipped, or pay the Forty Shillings to the uſe of the Poor, 3 *Car.* 2. c. 3. *Dalt. Juſt. P.* c. 7. Fol. 31, 32.

If a Warrant be directed from a Juſtice of the *Peace*, to a Conſtable and Church-wardens, againſt an Inn-keeper, Ale-houſe-keeper, or Victualler, for ſuffering Exceſſive Drinking, or Tippling in his Houſe, as any Townſman, or others, ſo Tippling, or being Drunk, and he neglects to do his Duty, he forfeits 10 *l.* to be levied by Diſtreſs and Sale of Goods, to the uſe of the *Poor* of the *Pariſh*: Any perſon, for Exceſſive Tippling, is to pay 3 *l.* 4 *d.* or to ſit in the Stocks four Hours; for being Drunk 5 *l.* or to ſit in the Stocks ſix Hours if the Money be not paid, or there be no Goods belonging to the Offender, whereon Diſtreſs is to be made, and the Inn-keeper, Ale-houſe-keeper or Victualler, for ſuffering ſuch Offences in his Houſe, upon

due proof, forfeits 10 *s.* and the Distress made, must be sold in six days, if the Money of the Distress be not in the mean while paid; and if such Ale-house-keeper, Victualler, *&c.* refuses to sell a full Ale Quart of the best Ale or Beer for one Penny, or two Quarts of small Beer for a Penny, or selling less than such Measure, the Party so offending forfeits 20 *s.* for every Offence, to be levied as aforesaid: And if, in these particulars, no Distress be found, or if the Officer neglects, within twenty days, to certifie the Default to the Justices, the Officer forfeits 40 *s.* to be levied by Distress and Sale of Goods to the use of the Poor, by Warrant to be directed to any indifferent Person, under the Hands and Seals of one or two Justices of the Peace; and for Default of such Distress, the Justice may send the Offenders to Prison, there to remain till the Forfeitures are paid, pursuant to the Statute, 1 *Jac.* chap. 9. 1 *Car.* 1. chap. 4. and some other Statutes relating to these Forfeitures and Penalties in Particulars and Generals; but Offences of this Nature are to be enquired into, within six Months after they are committed, and the Constable, and other Parish-Officers, may be charged upon Oath, to make a due Presentment of them.

As for Ale-measure, here is meant *Winchester*-measure, the Statute not being repealed, by reason of Excise and Dearness of Hops and Malt, to what it was in former times, the price of Drink is raised by the Brewers, that a *Winchester* Quart of strong Beer or Ale stands the Victualler in more than a Penny, yet let them beware of raising it to an extorting price, lest this Statute may be made use of to keep their Consciences within Bounds of Moderation.

If any Ale-house-keeper refuse to lodge a wayfaring Person or Traveller, he or she offering Money for the Victuals and Drink, *&c.* in present pay, the Constable, upon such Refusal, may cause such Ale-house-keeper, or Inn-keeper, to be Indicted at the Sessions or Assizes, where he may be Fined or Imprisoned, or the Party

so refused may bring his Action on the case; but then ready Money must have been offered before hand, if required, *Coke 9. Rep.* Fol. 87. b. 10 *Hen.* 7. 8. *Dalton's Just. P.* chap. 7. Fol. 28. They lye liable to Penalties also for keeping any Gaming in their Houses or Backsides. And indeed the Laws are very strict in these Cases, to prevent Mischief and Inconveniency.

Weights and Measures.

In the Market-Towns, Cities and Boroughs, there ought to be common sealed Weights and Measures, at which the Inhabitants may be freely allowed to weigh, and all Foreigners must pay for every Draught under 40 *l.* one Farthing, and for a Draught between 40 and 100, a Half-penny, and for a Draught between 100 and 1000, a Penny; which Money is to go towards the maintaining the Weights, and the Person that attends the Service; or the Officers that attend the Service may have their Reward at the Discretion of the Inhabitants, 8 *Hen.* 6. chap. 5.

And if in a City such common Weights and Measures are wanting, it forfeits to the King 10 *l.* every Borough 5 *l.* and every Town where publick Market is held 40 *s.* and the chief Officers of such places, are, upon the Request of the Inhabitants &c. to them made, to Seal and mark such Weights and Measures for any of the King's Subjects, taking for Sealing and Marking, as the Statute in that case directs, and none ought to Weigh or Measure with any other than what are Sealed and Marked, 8 *Hen.* 6. c. 5. 11 *Hen.* 7. c. 4.

And for the more regular and due observing of this, that no Frauds in this kind may be, the Mayors and chief Officers in Cities, Boroughs, &c. once every Year at the least, are to view all Measures and Weights within their Jurisdiction, and to burn or break such as are not Sealed, or less than Measure or Weight, according to the King's Standard; also to Amerce the Offender, *viz.* for the first Offence 6 *s.* 8 *d.* for the

second Offence 13 *s.* 4 *d.* and for the third Offence 20 *s.* and over and above the Offender may be adjudged to be set in the Pillory, 11 *Hen.* 7. c. 4.

Watches.

For the better Security, and quiet Repose of the Inhabitants in every Town, Village, Parish, and Tything, a Watch every Night from *Ascension-day* till *Michaelmas*, ought to be kept from Sun-set, to Sun-rising, which the Constables, and other Officers there appointed, must cause to be set by two, four, or more able Men, according to the largeness of the place, 13 *Edw.* 1. c. 4. *Poulton Tit.* Watch. 1. *Dalt.* 60. Fol. 140.

The Watches thus lawfully set by Authority, have power to examine such Persons as pass by them in the Night, being Strangers or others, and finding a reasonable ground for cause of Suspicion, they may secure them till the Morning; and such as refuse to obey, they may levy Hue and Cry in pursuit of them: And where they refuse, if the Watch-men beat them, it is justifiable: And to secure them, they may put them into the Stocks, or Cage, till the Morning; and then if they give a good account of themselves, or that no farther Suspicion appear; but that they may be honest People, they may let them go; but if otherwise, then they are to deliver them to the Constable, who is to convey them before a Justice to be examined, who may commit them, bind them over, or utterly discharge them, according as he finds cause.

The Watch in this case is to apprehend such as Ride, or go Armed, Scouts, Eves-droppers, Nocti-vagrants, Night-walkers, and all sorts of Rogues and Vagabonds, *&c.* 1 *Dalt.* c. 60. Fol. 140. 5 *Hen.* 7. 5. 5 *Edw.* 3. 14.

The Watch so set by Authority, must be Men Healthy, and of able Bodies, and do their Duty, sufficiently Armed; and no Person, not being an Inhabi-

tant

tant within the Town or Parish where the Watch is kept, can be compelled to Watch.

The Inhabitants are to take their Watching in turns, as it comes to them by the number of Houses, as the Custom of the place has been, and may not be compelled out of order by the Constable to do it.

If any Inhabitant be lawfully Warned in his Turn, by the Constable, to Watch, and refuses it, he may Present him at the next Sessions or Assize, or to make his Complaint to a Justice of Peace, who has power to bind him over to his Good Behaviour, and so continue him to the next Assize, or Sessions, to answer the Contempt. And this is the surest way, though *Dalton* holds, the Constable, *Ex Officio*, may set him in the Stocks for such Contempt.

If a Constable, or any private Person, do make a Refusal to attend on a Justice of the Peace, being so Requested to do, in order to remove a Force, or convey any Party to the Gaol for such a Neglect of his Duty, he may be Imprisoned, and over and above Fined to the King, 13 *Rich.* 2. c. 2. *Dalt. Just.* P. c. 21. Fol. 57.

CHAP. III.

The Constable's Duty relating to Swearing and Cursing, Vagabonds and Beggars. With a Conclusive Discourse directing High-Constables, and Petty Constables, what to Return before the Justices in Sessions.

Swearing and Cursing.

BY a late Statute made in the 6th and 7th Year of the Reign of *William* the Third, *Chap.* 11. it is Enacted, for the restraining that Dangerous and Unprofitable Sin of Swearing and Cursing, that such, as

in the presence or hearing of a Justice of the Peace of the same County wherein the Offence is committed, or Head Officer, or Justice of the Peace of the City, do Swear or Curse, or are thereof convicted by Witness, or Confession of the Party, before any Magistrate, the Offender, if a common Soldier, Labourer, or Servant, shall pay for every Oath, &c. 1 *s.* for the Use of the Poor of the Parish wherein the Offence is committed, and every other Person is to pay 2 *s.* for the like Offence; for the second double, for the third treble, to be levied by Distress, by Warrant from one Justice of the Peace; and where no Distress is found, the Offender, if above Sixteen Years of Age, is to be set in the Stocks the space of one Hour, for one Offence, and two Hours or more for two Offences; but if under Age, to be whip'd by the Parents, or Master, in the presence of the Constable, &c. who neglecting to put this Act in Execution, being knowing of the Offence, to forfeit Five Pounds; and none are to be prosecuted upon this Act, beyond the Expiration of Ten days, therefore Information must be given within the said Ten days after the Offence committed. And for the better deterring Offenders to commit Offences of this kind, it is ordained to mind them of the Danger and Shame they are like to incur thereby, that this Act be publickly read in Churches next Sunday after every Quarter-day, immediately after Morning-Prayer, under Penalty of 20 *s.* for each Omission, and Justices, &c. are to keep a Register of all such Convictions before them, and to certifie the same at the Quarter-Sessions, to be there Recorded, where any one may search for the same, and see it without paying any manner of Fees.

Vagabonds and Beggars.

By an Act of the 11th and 12th of *William* III. it is Enacted, that after the 24th of *June* 1700. if any Vagabond, Beggar, or any Person whatsoever, shall be brought

brought to any Constable, Headborough or Tythingman, or other Officer, with a Pass, Testimonial, Letter of Request, or other Writing whatever, pretending thereby either to be Relieved or Conveyed: The said Person or Persons shall, by such Constable, or other Officer, or by some other sufficient Person or Persons whom he shall order or depute, be carried before some one Justice of the Peace of the County, which Justice is carefully and diligently to Examine him or them, and if he finds they ought by Law to be punished, he is to send them to the House of Correction, and take such farther course as in that case the Law directs: But if no such cause appear, then he or they are to be immediately conveyed out of the County, to such Town of the next County, unto or through which such Person or Persons are to pass or be conveyed, as the said Justice shall think most proper; and every Constable, or other Officer, is to convey them to the House of Correction, or such Town as aforesaid, without delay. And farther, The Justice is, by this Act, obliged to give the Constable, or other Officer, a Certificate without Fee, of the Number of such Persons as he shall so order to be punished or conveyed; as also the manner how, when, and from whence such Persons are to be conveyed. And farther, the Justice ought to Tax the Charge on the back of the Certificate, which the Constable, *&c.* delivering to the High Constable of that Division, he is to pay him his Charges out of the Monies of the Gaol and *Marshalsea* Money, and take a Receipt for the same, which Receipt shall be accepted by the chief Treasurer of the County, and allowed in his Accompts as so much Money; and if the Gaol and *Marshalsea* Money fail to be sufficient, then the Justices in their Quarter-Sessions, may raise a Tax in their Counties, Ridings and Divisions, in such manner as they raise it for the County-Gaols and Bridges, the Money to be paid to the chief Constable of each Division, so as they shall have a quarterly Payment in their Hands before-hand:

And as often as the ſaid Petty-Conſtables or Deputies ſhall produce the ſaid Certificates, they ſhall be paid their Charges according thereto, and the High Conſtable muſt account for ſo much at the next Quarter-Seſſions, and the Petty Conſtable is not to charge the Inhabitants of his Conſtabulary with any Sum or Sums of Money, or any Proviſions, to the Relief or Conveyance of the Rogues or Vagabonds.

And if any Conſtable, or other Officer, to whom it belongs, ſhall neglect to Apprehend ſuch Vagabonds or Beggars, or be remiſs and negligent in doing his Duty by this Act required, then for ſuch Offence he ſhall pay 20 *s.* one fourth part to go to the Informer, and the other three parts to the Poor of the Pariſh, and he may be Convicted before a Juſtice, by the Oath of one Witneſs, and upon refuſal to pay, Diſtreſs may be made by Warrant, as in other caſes. But this Act is to continue but three Years, and from thence to the end of the next Seſſions of Parliament.

Returns in Seſſions.

1. The High-Conſtable is to return the Defaults of Petty-Conſtables, Tything-men, *&c.* for neglecting to apprehend and puniſh Beggars, Rogues, Vagabonds, or refuſing to Paſs them, *&c.*

2. They are to Return all ſuch Ale-houſe-keepers, or Victuallers, as ſell Ale or Beer without Licenſe.

3. Such Perſons as are to Watch and Ward, who neglect or refuſe to do their Duty therein.

4. The Names of ſuch as Prophanely Curſe and Swear, with the number of their Oathes, immediately, or within ten days, informing the Juſtice of Peace of ſuch Offence.

5. The Names of ſuch Perſons as ſhall Drink or Tipple in any Inns, Ale-houſes or Taverns, at any time, eſpecially on the Lord's-day; and ſuch Perſons as they ſhall find Drunk, with the Names of thoſe that entertain them.

6. They

6. They are Required to Return the Christian and Sir-names, additional Names and Qualities of all Popish Recusants, as well Lodgers as Housholders, residing or dwelling in any of their respective Parishes or Divisions.

7. The Names of such Persons as divide their Houses into Tenements, and take in Lodgers, or Inmates, that annoy their Neighbours, or are likely to be a charge in the Parish.

8. Such Persons Names as suffer any unlawful Games to be used in their Houses, Gardens, or Backside, with the Names of such as haunt Gaming.

9. They are to present Bakers putting Bread not due Weight to Sale; and all Annoyances as Nusances.

10. They are to present all Masterless Men and Women, as Idle Persons, &c. who can give no account how they get their Living; Likewise all Whores, Night-walkers, &c.

11. They ought to present Scavengers negligent in their Duty.

CHAP. I.

The Office and Duty of a Church-warden, Questman, Sides-man, in each Particular Duty belonging to the Parish.

Lord's-Day.

THEY are strictly to see the Lord's-Day kept in, and and out of the Church, and to visit Inns, Taverns and Ale-houses; and if in the time of Divine Service they find any Persons Tipling there, they may carry them before a Justice of Peace, who may cause them to pay 3s. 4d. for Tipling, over and above the 12d. due for being absent from the Church; and he that keeps the House, for so suffering them to Tipple, forfeits 10s. and these sums to go to the use of the Poor of the Parish, 4 Jac. ch. 5.

The Minister and Church-wardens are not to suffer any Person to Preach within the Church nor Chappel, not producing a License to authorize him so legally to Preach, and such an one as shall to them appear sufficient, Can. 50. 85. No Sports are to be suffered in the Church, Chappel, Church, or Chappel-yard, on a Sunday or other Days, or any thing unseasonable or tending to the prophaning those Places, nor the Bells to be rung for Sport or Pastime, but to be rung only upon suitable and solemn Occasions.

The Church-wardens, as Thinted, being in the Nature of a Corporation, have power to take Gifts for the purchasing Furniture to the Church, or for other Advantages to the Behoof of the Parish; but they may not take an Estate of Land by the name of Church-wardens only; for if there be a Feoffment made to the Church-wardens of the Parish, the use is void in it self; for they are not in a capacity to take such a Purchase, nor may they subscribe to have Lands to themselves or their Successors; for as to Lands they are no Corporation, but to Goods only.

Bells and Pews.

If a Bell be broke, or any ways spoiled, so that it is not Tunable, the Churchwardens by the Agreement of the Parishioners, or the greater part of them, may cause it to be new cast, leaving it in the Founder's Hands till he is paid, and by that means the Church-wardens may bar their Successors of that Account.

If any indifferent Person, or other in place, buy a Bell, set up a Pew, or any Ornament to the Church, it cannot be taken away by him or his Heirs, &c. Because it is a Dedication, and the Church-wardens may sue those that attempt it; but the Action must be commenced for Goods for the use of the Parish, and not in the Church-wardens own Name; nor can any Church wardens sell, impair, or release any of the Goods of the Church, without the free consent of the Sidesmen or Vestry, under pain of being brought to Account for it, by the Succeeding Church-wardens, and forced to make sufficient Satisfaction.

If the Church-windows or Walls be broke, the Trees cut down in the Church-yard, or the Grass eaten up there, this lyes in

the

the Parſon's care to redreſs, and not the Church-wardens, for he is Conſervator of the Church and Church-yard, as the Church-wardens are of the moveable Goods only.

The Church-wardens have the care of repairing the Pews in the Body of the Church, &c. and other Seats; but it is held in moſt caſes they have not the diſpoſing of them in the Body of the Church, the diſpoſal belonging to the Ordinary of the Place, to place and diſplace whom he pleaſes, though in this there are excepted or exempted caſes; for ſuppoſe a Man and his Anceſtors, and all thoſe whoſe Eſtates he hath in his Poſſeſſion in certain Meſſuages, have time out of Mind continued to repair an Iſle or Pew, or ſit there, this alters the caſe, and the Ordinary cannot meddle nor diſplace; for if he do, a Prohibition lyes; for by Preſcription, he hath and enjoys it for a reaſonable Conſideration: But if there be no care taken to repair ſuch a Pew by the Party claiming by Preſcription, and it run to ruin, the Ordinary may take it into his Hands; yet he hath nothing to do in this caſe in exempted Chappels belonging to Noble-Men.

The Church-wardens, beſides the looking after the Books, and other Neceſſaries and Ornaments of the Church, to ſee them kept in good Order, are to provide Bread and Wine for the Sacrament, proportionable to the number of the Communicants, and a Pariſh Rate may be made for ſupplying this, and other Neceſſaries. The Church-wardens and Queſt-men are likewiſe to ſee that in every meeting of the Congregation, the Peace, and a due Decorum *be kept. Alſo to put out of the Church ſuch as are Excommunicated.*

Pariſh Rates.

In caſe of making a Rate for the defraying of Charges, it muſt be done by the Church-wardens, with the conſent and aſſent of the Major-part of the Pariſhioners, Houſe-keepers, of which they are to have convenient Notice before ſuch time appointed, for the ſaid Meeting, to fix and ſettle ſuch Rates. Now if upon the ſetting upon theſe Rates, a Man dwell in one Pariſh, and have Land in another which he occupies there, he lies chargeable for his Lands ſo occupied in the Pariſh where

his

his Land lyes; but if he lease out the Land he hath in another Parish, reserving Rent, then is he not to be charged for his Lands there, because there is a Parishioner and Inhabitant liable to be charged elsewhere, Co. 5 *Report,* fol. 57.

No Person keeping a Stall in a Market, and not being an Inhabitant of the Parish where that Market is kept, can be rated toward the Reparation of the Church; but if a Citizen build a House in an Out-parish, and partly live there, and partly in the City, not having any Land to lease out or occupy in the Parish where his Country House stands, he is however as an Inhabitant liable to the Church Rate, and no Prohibition lyes in this case in the Court Christian, because the Jurisdiction of the thing is not in their Power, though he be rated more than they that have 50 or 100 Acres of Land in that Parish.

If there be in a Parish a Chappel of Ease, and one part of the Parish time out of Mind is wont to repair it, hear Service, and have a custom to Marry in it, and all other Rites, except burying their Dead at the Parish Church, they are however liable to be rated for repairing the Mother Church, Mich. 13 Jac. (1) C. B.

Where only part of the Parishioners are rated, and for defect of Payment, sued in the Ecclesiastical Court, the matter must be pleaded in this Court, for in this case a Prohibition will not lye; and if the Majority of the Parishioners agree to encrease the number of Bells or Ornaments of the Church, it is binding to the rest, and they are liable to the Rates that shall be made, though not consenting to it; and for any Ornaments for the Church, they ought to be rated only for their personal Estates, and not for Land, &c.

And, among other things, it is Enacted, relating to the City of London, *That, where any Church-yard or Church be fronting or adjoyning to any of the Streets, Lanes, or Passages mentioned in the said Act, the Persons thereby appointed and authorized may, for the paving the said Streets, &c. so far as the Church or Church-yard extends, assess the Inhabitants of the Parish a reasonable Rate, to be paid by the Church-wardens of every such Parish for the time being, who, in the behalf of the Parish, are required by that Act to pay the said Rate,* 22 & 23 Car. 2. ch. 17.

Choice

Choice of Surveyors.

The Business of the Church-wardens is to be conjunct with the Constables, in choosing the Surveyors for the High Ways, and appointing proper Days for their Work; also in the Oversight of the High Constable, to account for Moneys levied by way of Forfeitures relating to the High-ways; and with the Assistance of two Justices of the Peace, one to be of the Quorum, *oblige the High Constable to account for, and pay the Money so coming to his Hands; and to execute the Justices Warrant for Forfeitures and Penalties for not cleansing the Streets or repairing the High-ways,* 14 Car. 2. *ch.* 2.

The Church-wardens taking to them the Assistance of the Overseers of Poor, have Power to execute the Warrants directed in the Woolen Burying Act, and levy the 5*l. Penalty by Distress and Sale of Goods for Non-payment, to be employed to the Poor of the Parish where such Offence is committed,* 18 Car. 2. *ch.* 4.

In London, Westminster, *the Burrough of* Southwark, *&c. The Church-wardens, together with the Constables, Overseers of the Poor, and Surveyors of the High-way in every Parish respectively, or a greater number of them, are on* Monday *or* Tuesday *in* Easter *Week yearly, upon giving publick Notice to call together such other Inhabitants as have borne the like Offices, to nominate and make choice of two fit Persons, being Tradesmen of their Parish, to be Scavengers for the Lanes and Streets, other open Passages of each Ward or Division within the said Parish, to continue for the space of a Year, or till others are chosen and settled in their place,* 2 W. & M.

At the end of the Year, or within one Month after at farthest, the Church-wardens are to give up the Account of their Receipts and Disbursements before the Minister and Parishioners, and upon quitting their Offices, to deliver up to the Parishioners such Money and things as are remaining in their Hands, that it may by them be delivered over to the succeeding Church-wardens by Bill Indicted, Cannon 89.

Upon

Upon refusal of this they may at the next Visitation-court be presented for it, or an Action of Account may be brought against them at Common Law by the Succeeding Church-wardens, to compel them to it, and their needful Expences and Disbursement upon the Accounts and Business of the Parish, upon making up their Accounts, shall be allowed them.

As for Presentments, they are not obliged to make them above once in the Year, where by custom it has been no oftner used, nor in any Diocess whatever above twice a Year, unless it be at the Bishop's Visitation; and for such Presentments of every Parish-church or Chappel, the Register of the Court where they are Exhibited, is to receive no more than 4s. a Year, for his so Registering them. But the Church-wardens, of their own accord, may oftner make their Presentments, Can. 116.

One of the times of Presentments is ever to be about a Fortnight after Easter, *and at that time they are to resign their Office to the Succeeding Church-wardens, and the new ones cannot be Sworn before the old ones have given in their Presentments; and every Parson, Vicar, or in their Absence their Curates, in the said Presentments, are to joyn with the Church-wardens, &c. And upon the refusal of the Church-wardens, to make Presentments, the Parson, Vicar, or their Curates in their Absence, may make their Presentments to their Ordinaries at all such times, and when else they shall think fit,* Canon 118.

It is provided that no Church-wardens, Sidesmen, or Questmen, shall be cited or called, but only at the times limited to appear in the Ecclesiastical Court, or before any Ecclesiastical Judge whatsoever, for refusing to present any Faults committed in their Parishes at other times, and by the Ecclesiastical Law punishable; nor be further troubled after their Presentments delivered at the usual times, unless it manifestly appear they have wilfully neglected, and wittingly omitted for Favour, Affection, or otherwise, to present some one or more notorious Crime, or Crimes; upon just cause arising, to call them in order to Explain their former Presentments; and the Ordinary, in case of such wilful Omission, may proceed against them, as in the Ecclesiastical Courts, in case of wilful Perjury the Law has provided, Canon 117.

Grounds

Grounds of Presentments.

1. Whether the Church, Chancel, Bells and Ropes be in good Repair. The Lord's Prayer, Ten Commandments, and Creed be drawn in fair Letters; what Assessments are made for the Repair of the Church, and the Names of such as make default in paying them; whether there be a Communion Table, Carpet, and Font in the Church, and all other necessary and useful Ornaments in Church and Church-yard; whether the Parsonage-house, and Out-houses are in good Repair.

2. Whether the Parson, Vicar, or Curate Read the Common-prayer at Morning and Evening Service, with his Surplice, or Preach every Lord's-Day, Read Homilies, Catechise, keep Preambulation, Preach sound Doctrin, and use no Seditious Expressions against the Government; whether he celebrate the Lord's-Supper at least three times every Year, once to be at *Easter*; whether he Baptize Infants with Godfathers and Godmothers, Bury the Dead according to the Form prescribed in the Book of Common-prayer, Preach in his Gown, Visit the Sick, and Pray with them; whether he Marry Clandestinely; that be a Sober Man, live Chastly, and be a Peace-maker in his Parish; whether once every Year at least be Read the Canons to the Parishioners, and twice every Year the 39 Articles.

3. Whether the Parishioners at due Age resort to the Parish church to hear Divine Service, and there reverently and decently behave themselves; whether any Work, or Sell Wares on the Lord's-day, &c. Whether Vintners, Inn-keepers, or Ale-house-keepers, keep Tipling in their Houses on the Lord's-day.

4. Whether any be Married within the prohibited Degrees, or be Adulterers, Fornicators, Swearers, Drunkards, Blasphemers, Sorcerers, &c. Whether all the Parishioners above 16 Years receive the Communion, at least thrice in the Year, *Easter* to be one time; whether any unseasonably keep their Children from being

Bap-

Baptized, or Women decline the usual Time of being Churched after their Delivery; whether any bring not their Dead to be decently Buried after the Service of the Church; whether any have been Married without the Publishment of Banns, or License, or at unlawful Hours; whether their Hospitals, Alms-houses, Schools, or Stocks, if any belong to them, be well and Godly used, or any thing detained from them; what Legacies are given to Pious Uses, and if the Parishioners are orderly placed in their Seats without Contention.

5. Whether the Parish-clerk, or Sexton, be duly chosen, can Write, Read, make the Responses, and be an honest Man. If the School-master, Usher, Physician, Chyrurgeon, or Midwife, if any be in the Parish, Teach or Practise without License? Whether the Church-wardens be duly chosen in the Week after *Easter*, by the Minister and Parishioners, according to the Canon or Custom: Whether the old Church-wardens have been careful to keep the Church in Repair, to keep, and carefully to secure, all Furniture belonging to the Church, &c. And whether, in the middle of Divine Service, they walk out of the Church to visit Taverns, Inns, Ale-houses, &c. where Tippling may be used, and to see who are Loytering, or Exercising any Sports on the Lord's-day.

Presidents for Church-wardens.

The Church-wardens have no Action at Common-Law to recover a Legacy never in their Possession: But for any Goods and Ornaments of the Church, being once in their Possession and Custody, they may maintain an Appeal of Robbery against any one or more Persons that Steals them, and an Action of Trespass against him that does, without Right, take them away, even against the Parson or Vicar so offending; and the Damages so to be recovered against such Offenders, shall be converted to the Use of the Parish.

But

But if it ſo fall out, that thoſe Church-wardens, from under whoſe Cuſtody the Goods were taken, chance to Die before they have brought any ſuch Action, the ſucceeding Church-wardens have no Right, by Law, to bring an Action for the ſame Goods.

If a Church-warden preſents, that any Pariſhioner, certifying his Name, is a Railer, common Diſturber, or ſower of Diſcord, among the Neighbours, unleſs it be done in the Church or Church-yard, a Prohibition lies, if the Preſentment be made in the Eccleſiaſtical Court, becauſe it is the Leet, and not in the Church-warden, if the Offence be committed elſewhere, that is to preſent it.

If any one take the Organs out of the Church, the Church-wardens may bring an Action of Treſpaſs; for the Organs appertain to the Pariſhioners, and not to the Parſon; ſo no Action will lye in the Parſon's Name, nor can he Sue the Party that took them in the Eccleſiaſtical Court.

If a Bell be broke, the Church-wardens may have an Action againſt him that ſo broke it, or cauſed it to be broken, and recover Damages to the Uſe of the Pariſh.

If any one be Sued in the Eccleſiaſtical Court, for refuſing to Feaſt and Entertain the Church-wardens, and thoſe that go with them in their Perambulation or Proceſſion, with Bread, Cakes, Cheeſe and Ale, though his Anceſtors, living in the ſame Houſe, had done it on the like Occaſions, time out of mind, a Prohibition will lie againſt it; for that in ſuch caſes the Church-wardens claim it in the nature of a Corody.

If a Suit be commenc'd by the Church-wardens in the Court Eccleſiaſtical, for a Church-way, claimed as a Right belonging to all the Pariſhioners by Preſcription: Here a Prohibition lies, it is a Temporal Caſe, and not in the Juriſdiction of the Spiritual Court.

Over-

Overseers.

All Overseers ought to be credible, honest, substantial Men. They are to be yearly chosen, and joyned with the Church-wardens of the Parish, in the Oversight, due Regard, and Care of the Poor; they are to be made choice of by two or more of the Justices of the Peace, one to be of the *Quorum*, who are enjoyned yearly, at *Easter*, or within a Month after, under their Hands and Seals, to appoint Four, Three or Two Substantial House-keepers, according as the Parish requires, to be joyned with the Church-wardens, to oversee and look to the Poor in their Parish, according to the Statute of 43 *Eliz.* c. 2. 21 *Jac.* I. c. 28.

In this case the major part of the Officers, without the remainder, may do any thing belonging to their Office, with the allowance and consent of them, either in particular or general, with two Justices of the Peace, one to be of the *Quorum*, and when they are not hindred by just Occasion, the Excuse to be allowed by two Justices of the Peace; they are to meet on the Lord's-day in the Church monthly, after Evening Prayer, to consult of such Matters relating to their Office, as may turn to their best Advantage; and upon neglect, without such reasonable Excuse, are liable to forfeit 20 *s.* for every Default, 43 *Eliz.* *Wingate's* Abr. Tit. *Poor People.*

And if, according to the 43 *Eliz.* they be not regularly and duly appointed, then every Justice of the Peace, or Head Officer of that Division, forfeits 5 *l.* which may be levyed by a Warrant of Sessions, and employed to the Use of the Poor where such Default is made.

Of the Poor, there are reckoned three sorts or degrees; and first, those by Defect and Impotency, as the Aged and Decrepid, being past their Labour.

The Infant, Fatherless and Motherless, not capable of being set on Work.

Those

Those naturally Disabled, either in Wit or Members, as the Lunatick, Ideot, Lame, Blind, and the like, not being able or capable to Work; and Persons being visited with grievous Sickness and Diseases, though Casually, however, being for a time, thereby rendred Impotent.

These, in their degrees, are to be provided for, and the Overseers are to take care they have necessary Relief, and such proportionable Allowances as shall appear convenient, according to the measure and continuance of their Needs and Maladies.

Secondly, Such Poor by Casualty, such as are casually Disabled or Maimed in Body, as Labourers, Soldiers, Mariners, *&c.* Maimed, or so Disabled in their proper and lawful Calling. Also the decayed Housholder, by Casualty of Fire, Losses at Sea, Suretiship, Robbery, or Decay and Loss in Trade, *&c.* A poor Man or Woman over-charged or burthened with Children, and not able to keep them by their Labour. All these, and the like, having Strength and Ability of Body, but no means whereby to Sustain themselves or Children, are to be set to work; but if the Profit thereby arising, procure not a sufficient necessary Maintenance, so that they cannot live thereby, they are Objects of Charity, and to be relieved at the Charge of the Parish; in some reasonable Proportion and Measure, as their respective Wants and Necessities shall render them deserving, in the just Opinion of the Overseers, under whose Care they are.

Thirdly, Such as are Thriftless, who have wasted what they had by Prodigality and Riotousness, Playing, Drinking, Debauchery, and the like, or such as are Dissolute, Strumpets, Pilferers, Idle Persons refusing to work, Vagabonds that will settle in no place, nor be content with Service; and for these the House of Correction is appointed, where they are to be sent; and if of able Bodies, put to hard Labour, to maintain themselves by it, without being chargeable to the Parish, Town or County, for any Allowance; however,

however, they are not to be suffered to perish for Want; but in case any of these last first prove Impotent, by Sickness, want of Ability of Body, or that their Work will not supply what is needful for the Necessaries of Nature, then in their extream Necessity there must be an Allowance by the Town, &c. *Dalt. Just. P.* c. 73. Fol. 170. And where the Parents are able to work for their Children, so that it will maintain them, they may be compelled to do it; but if over-burthened, the Overseers, at their Discretion may take what Children they think fit off their hands and put them Apprentice, or otherways dispose of them to Nurses, or else allow the Parents something to enable them to keep them.

The Father, Grand-father, Mother, Grand-mother, Children and Grand-children, are obliged to relieve those so allied to them, that are poor and impotent, if themselves are of Ability, in such manner as the Justices shall order it at their Quarter-Sessions, by assisting the Party or Parties, and upon obstinate Refusal or neglect to obey their Order, a Penalty of 20 *l.* every Month is forfeited to the Poor of the Parish, to be levyed by the Church-wardens, Overseers, or one of them, by Distress and Sale of the Offender's Goods having first, to that end, received a Warrant under the Hands and Seals of two Justices of the Peace, one to be of the *Quorum*, and in defect of such Distress, the Justices may commit the Offender to Prison without Bail or Mainprize, to remain there till the Forfeiture be paid. 43 *Eliz.* 2 *Dalt. Just. P.* c. 73. Fol. 146. *Resol. Judges* 16, 17. But a Grand-father-in-Law, if he has no Estate with the Grand-mother in Marriage, or that after comes to her, is not held liable to this, though he brings her considerable of his own, or is afterwards inabled by his Industry, or at least, if the latter, which is held doubtful, he is obliged to it no longer than his Wife lives. *Second Part of Rolls. Reports*, Fol. 245, 246, 247.

If

If any Poor Beg in the Parish, a License must be granted for it by the Overseers; and if in the Highways, by those Overseers. And by an Order of Sessions, a Cottage may be erected on the waste of a Mannor, and poor Inmates may be lodged therein; but it is afterward to be employed to no other Use. And such Poor as cannot get Work, and are able, are to be set on Work by the Overseers; and a Justice of Peace may send such to the House of Correction, that being employed by them and the Church-warders, will not Work, being not otherways able to maintain themselves; and they, with the consent of two Justices of Peace, or more, one being of the *Quorum*, may set up, occupy, and use any Mystery, Trade or Occupation, for the better Relief of the *Poor* in the *Parish*, *Town* or *Place*, within their Districts, to set them on Work, which is very commendable, and may be wished it were more put in practice.

Poor Children.

Due Care must be taken of all indigent Children, that they must be so placed, as not again to be chargeable to the *Parish*, and that they may learn such suitable Crafts and Mysteries, as when their Time expires, with Labour and Diligence, they may be enabled to keep themselves and Children, their Age to be above seven, and under Fifteen, when they are so placed; and in doing this, the Overseers must have the consent of two Justices of the Peace, and they may Bind Men-children to the Age of 24, and the Female to the Age of 21, or till she be Married, which first shall happen; but it must be within the *Parish* or *Hundred*; and they may give Money, if they cannot put them off without; and the Master's refusing to take them, when so offered, may be presented and indicted for the same, upon the Statute of 43 *Eliz.* at the Assizes or Sessions of the Peace; and *Parents* refusing to let them be so put Apprentice, without good cause shewed

so

for it, may, be the Justice, be bound over to answer the Default; and the *Children* refusing, may be sent to the *House of Correction*, till they will comply. He or she must be Bound by Indenture, and the word Apprentice specified in it, or else it is not Binding.

The Form of an Indenture of an Apprentice, put out and Bound by the Overseers, &c.

THis Indenture made the Eighteenth of September, *in the Eleventh Year of the Reign of our most Gracious Sovereign Lord* William *the Third, by the Grace of God, of* England, Scotland, France *and* Ireland, *King, Defender of the Faith &c. Annoq; Dom.* 1700. *witnesseth, That* G. H. *and* N. O. *Overseers of the Poor in the Town of* Buckingham, *and* R. E. *Church-warden of the same Town, by and with the consent of* R. S. *Esq; and* W. T. *Esq; two of His Majesty's Justices of the Peace of the County of* Buckingham, *have, by these Presents, placed and Bound* I. K. *being a Poor and Fatherless Child, as an Apprentice to* J. E. *of* Buckingham *aforesaid, Taylor, and as an Apprentice with him the said* J. E. *to dwell from the day of the Date of these Presents, until he the said* I. K. *shall come to the Age of* 24 *Years, according to the Statute in that Case made and provided; by and during all which Time and Term, the said* I. K. *shall the said* J. E. *his Master, well and faithfully Serve in all such lawful Business as the said* J. E. *shall put him the said* I. K. *unto, according to his Power, Wit and Ability; and honestly and obediently in all things shall behave himself towards his said Master, and all the rest of the Family of the said* J. E. *And he the said* J. E. *for his part promiseth, covenanteth and agreeth, that he the said* J. E. *the said* I. K. *in the Art and Mystery of a Taylor, in the best manner that he can or may, shall Teach, Instruct or Inform, or cause to be Taught, Instructed or Informed, as much as thereunto belongeth, or he the said* J. E. *knoweth. And also during all the said Term, to find unto him his said Apprentice, Meat, Drink, Linnen, Woollen, Hose, Shoes, Washing, and all other things necessary or needful for an Apprentice. In Witness whereof we the said*

J. E.

J. E. and L. K. have interchangeably set our Hands and Seals, the Day and Year aboresaid.

Poor.

By Settlement of the Poor, it is here meant such as are likely to be troublesome and chargeable to the Parish or place where they reside. And by the 13th and 14th of *Charles* II. chap. 12. The Overseers and Churchwardens making their Complaint to any Justices of Peace within four days, after any person that is poor and likely to trouble the *Parish*, cometh to settle in a Tenement under 10 *l.* by the Year, two of the Justices, one being of the *Quorum*, by Warrant under their Hands and Seals, may remove such a person to the *Parish* where they last had a legal Settlement by the space of Forty days or more, unless Surety can be by them given, that the Justices shall approve of, to secure the *Parish*, &c. from Damages or Charges that may ensue; and all persons agrieved, have free Liberty to appeal to the Quarter-Sessions.

In Harvest, or Work-time, poor persons settled in a *Parish*, having a *Certificate* under the Hands of the Minister of the *Parish*, one *Church-warden* and one *Overseer* of the *Poor*, declaring them Inhabitants there, may go into any of the adjacent or distant *Parishes* to work, and if they do not return, by reason of Sickness, or any other Impediment, it shall not be accounted an Impediment, though they stay after their Work is done; and if any return from the *Parish* from whence they are removed, it is in the power of the Justice of the Peace to send them to the *House of Correction*, where they may be punished as Vagabonds, or, at his Discretion, he may send them to a common Work-house, there to be employed at hard Labour; and upon the Refusal of the *Church-wardens* and *Overseers* of the *Poor* to receive them, and find them Work, &c they may, by the Justice, be bound over to answer it at the Sessions or Assizes.

Waking

Making Rates.

The Overſeers for the Poor, with the Churchwardens, or the Major-part of them, for enabling them to perform the things they in charge, may raiſe weekly, or otherways, by Taxation of every Parſon, Vicar, and the Occupier of Land, Houſe or Tithes, Cole-mines, or Underwoods ſaleable within their Pariſh or Diviſions, ſuch a ſum as in Moderation they ſhall think fit; but the Rate muſt be allowed and confirmed under the Hands of two Juſtices, one being of the *Quorum*, and then may be levied by Diſtreſs and Sale of Goods upon refuſal of Payment or neglect, by Virtue of a Warrant from any other two Juſtices, one being of the *Quorum*, rendering the overplus to the Owner; and for default of Diſtreſs, two Juſtices may commit the Party to remain in Priſon, without Bail or Mainprize, till Payment be made, or the Juſtices think fit to diſcharge him, 43 *Eliz.* ch. 2. *Dalt. Juſt. P.* ch. 73. fol. 148. *Wingate's Stat. Tit.* poor People. And theſe Rates ought to be made according to Mens real and viſible Eſtates, within the place only, and not according to Eſtates elſewhere. And further,

Obſerve, that a Pariſh in Reputation is deemed good within this Law; For granting *G.* a Pariſh very Antient, having Officers in it, nevertheleſs here is a Town within the Pariſh, that for time out of Mind, at leaſt a long time hath been uſed and reputed as a pariſh, and hath all parochial Rights, as Churchwardens, *&c.* in ſuch a caſe it may be Rated as a Pariſh towards the Poor, *Hutton's* Report, fol. 93, and others.

And there muſt be care taken in Rating and Levying this Tax, for it muſt lye on the Tenants occupying Land, *&c.* and not on the Landlord, in nor out of the Pariſh, for the firſt is only chargeable for the Land, *Bulſtrod*, 1 *part Rep.* 354.

Any Parſon having a full Tenth in a Pariſh, may be Rated a Tenth part, *Reſol. Judges* 1633. *Sect.* 33.

If

If any Person occupy Land lying in several parishes, he must in this Rate be accountable for them proportionably in the parishes where they lye; but it seems reasonable, that for his personal Estate, he should be charged in the parish where he is an Inhabitant.

In Rating Stock or Goods, it is to be rated according to the proportion of Land Rent, as 5 or 6 pounds a Year in Land to be held equal with 100l. in Goods or Stock.

In a parish where the Inhabitants by reason of their own poverty or fewness, are not able to relieve their poor, two Justices, one being of the *Quorum*, may by Rate Tax other places and parishes within the Hundred if necessity requires it; and this not proving sufficient, the Justices in their Sessions may Tax the County in part, or wholly if they think fit, 43 *Eliz. Wingates Abridg. Stat. Tit.* poor people. And if any person find himself agrieved by any Act done by the Justices of the peace or Overseers, they may for Redress apply themselves to the Justices in the Quarter Sessions, *Dalt. Just. P.* ch. 73. fol. 160. *&c.*

Giving up Accounts.

If a parish shall reach to and lye in two Counties, or one part thereof to lye in any City or Corporation Town where there are proper Justices, in that case the Justices of each County are to meddle so much as appertains to the party lying in the County of which they are Justices, and so of the other parts, and yet the Overseers shall without dividing themselves, execute their Office in all places within the said parish, but shall give up their Account to the Justices or Head Officers of both places, *Wingates Abridg. Stat. Tit.* poor people, 43 *Eliz.* ch. 2. *Dalt. Just. P.* ch. 73. fol. 158.

The Overseers of the poor are, within 4 Days after their Year is expired, and other Officers nominated their Successors, to give up their Account in Writing before two Justices of the peace, one to be of the *Quorum*, chiefly to this purpose:

1st. What Stock of Money they have received or Rated, and not come to their Hands. 2d. What Stock of Stuff or Ware is in their own, or in the Hands of any of the Poor. 3d. What Apprentices they have put out, and bound according to the Statute. 4th. What Poor they have set to Work or relieved. 5th. What Poor they have suffered to beg or wander out of the Town in the High-ways, or in their Town without their Directions. 6th. Whether they met Monthly to consider of such Matters as are properly belonging to their Office. 7th. Whether they have made their Rates indifferent upon the parishioners, according to their Ability. 8th. Whether they have truly endeavoured to gather and levy all Assessments. 9th. Whether in them there has been any neglect of the Justices Warrants directed to them on any Account, especially those for collecting any Forfeitures, according to the Statute, 43 *Eliz.* ch. 2. *Dalt. Just. P.* ch. 73. fol. 153.

Note, By the Statute made for the Burying in Woolen, 30 *Car.* 2. the Justices may not allow the Accounts of the Overseers of the poor, till such time as they have given them an Account of the Burials and Certificates, and of their levying the penalty by that Statute directed.

If they refuse to give in their Accounts, or make and yield a true and perfect Account to the said Justices, of such Money and Stock in their Hands, as has been mentioned; two Justices of the peace, one being of the *Quorum*, may commit them to the common Gaol, not to be dismissed till they shall render a true Account, and payed or satisfied the succeeding Overseers, so much of the Sum and Stock as shall any ways appear to be remaining in their Hands, and upon making a false Account, lye liable to be bound over to the Sessions or Assizes, where an Indictment may be preferred against them, *Dalt. Just. P.* ch. 73. fol. 121. Or the Justices, or any two of them may grant a Warrant to the succeeding Overseers, to levy the Sum upon the Goods and Chattels of the Offenders, by Distress and Sale, and to

want of such Distress, may commit them to Gaol till Satisfaction be. But note, upon Sale the Overplus is to be returned to the Owner. 43 *Eliz.* ch. 2.

If it so happen that any part of such Stock shall be found or known to be in the Hand of any poor, upon refusal of delivery, two Justices may by Warrant cause the value to be levied, or for want of wherewith or which to make Distress, commit the party to prison, as in the former Cases. *Dalt. Just. P.* ch. 72. *ibid.*

And for these and all other Faults and Negligences of Churchwardens and Overseers, relating to the Execution of their Office, as to the poor, &c. for every such Default made by any of them, he is to forfeit 20s. upon proof, by Confession, or Examination of Witnesses, to be levied by Warrant of two Justices of the peace, by Distress and Sale of Goods, or for want of it, the Offender to be Imprisoned, and the Money so levied to be Employed to the use of the *Poor* of the *Parish*, *Dalt. Just. P.* ch. 73. fol. 155. 43 *Eliz.* ch. 2. So that by the Law great care is taken that these Officers shall not be wronged in their just Rights, nor the *Parish* or *Poor* be wronged by them.

Fines for Poor's Use.

It is the Business of the Overseers of the *Poor* to receive such Fines or Forfeitures as accrue from Offences in such, as in the Night-time Kill, or take any *Coneys* upon the Borders of Warrens, or such Grounds where the Owner may lawfully keep *Coneys*, the *Parties* so Killing or Destroying, not being *Proprietors*, nor allowed by the Owner.

Also of such as use Hare-pipes, Snares, or such like Implements, or take Fish by any Nets, Angling, or other Device, in any Water or River not lawful, or shall be assisting thereunto, without the consent of the Lord of the Mannor or Owner of the Water; and the Sum for these Offences is to be amerced by the Justice of *Peace* before whom the *Party* offending shall be convicted,

victed, the sum not exceeding 10 Shillings, over and above what the Owner may have, or recover his Damage sustained for; and the Party for default of Payment may be sent by the Justices to the House of Correction, for any time not exceeding a Month, unless he enter into Bond with one or more Sureties to the Party aggrieved, the sum not exceeding 10 Pounds, never in the like manner to offend any more; and for these Offences, the Offenders Goods are liable to Distress and Sale, but then the Imprisonment must be remitted upon Satisfaction that way made, 22 &c. 23 Car. 2. ch. 2.

Weights and Measures.

The Overseers for the Poor, as well as other Officers, ought to have a special Regard to them, and in this case there ought to be one Weight, one Measure, and one Yard, according to the Exchequer Standard in every part of the Realm, as well within as without places priviledged; and every Measure of Corn is to be striked, and those that keep different Weights and Measures not agreeing in all respects with the Standard to buy and sell by, being convicted thereof by the Oath of two Witnesses, before any Justice of Peace, or Head Officer of the Town or place where the Offence is done, shall forfeit 5 Shillings, to be levied by the Church-wardens or Overseers of the Poor in the Parish where the Offence is committed, by Distress and Sale of Goods upon Warrant, and for want of such Distress the Offender to be committed to Prison without Bail till Payment be made, and if any Person be troubled for any Matter concerning his Office, in this case he may plead the General Issue, and give in Evidence, the Act of 17 Car. 2. And to have treble costs if the Suit so brought prove vexatious, *Dalt. Just. P.* 162. fol. 246. &c.

Burying

Burying in Woolen.

The Penalty of 5 pound is to the use of the Poor, where any Persons shall be buried in any Garment, Winding-sheet, Shroud, or any other Materials not made of Sheeps Wooll only; or if the Coffin the Dead Body is put into, be lined or faced with any thing made of any Material but Sheeps Woolly; and the Church-wardens and Overseers of the Poor are to take care of this in all Respects that the Forfeitures be duly Levied. See more, 30 Car. 2. ch. 3. &c.

The Scavengers Duty.

No Person under the Penalty of 5 Shillings, is to threw any Dirt, or Rubbish, or Noisome thing into the Streets that may be a hinderance or give Offence, nor into any Lanes, or places of publick Passage, &c. or against a Wall of any Church, Church-yard, or any House; or if they throw it into any common Vault, or Sink, to hinder the Current of the Drain, they forfeit 40s. 14 Car. 2. ch. 2. And those that sweep not up their Dirt for the Scavenger to take away before their Houses in Streets, Alleys, and other publick places, forfeit 12s. 4d. for every Neglect, 13 Car. 2. ch. 7.

If any Hoop, wash or cleanse any Barrels or other Cask, or set out empty Cask to mend, or hew rough Timber, saw Stone, for each of these Offences they are to pay 20s. and every Houlholder is to keep the Streets, Lanes, and other publick Passages, so far as belongs to him payed, well payed into the Channel, or middle of the Street or Lane, under the penalty of 20s. for every Rod that shall be defective, and 20s. a week till it shall be payed or mended. To enquire after Offenders, and make such Redresses as are found Aggrievances, by applying themselves to the Commissioners, &c. and by the Statute of 2 W. & M. among other things it is enacted, That the Rakers, Scavengers, and

other Officers thereto appointed, shall every Day in the Week, *Sundays* excepted, and other Holy-days, bring their Carts and other Carriages unto their several Charges and Divisions where they can pass, and give Notice at or before by the ringing of a Bell there, and in Alleys, and other places where they cannot pass, that the People may sweep up, and bring out their Soil, which the Rakers are every day obliged to carry away under Penalty of 40s. for every Offence.

Within Twenty days after the Scavengers are elected, the *Constable*, other Officers and *Parishioners*, or the greater number of them present, are to make a Rate or Assessment, according to Pound-Rate upon the Inhabitants of their *Parish*, to be allowed and confirmed by two Justices of the Peace of the place, &c. to be collected Quarterly; and if, upon demand of the Scavengers, or other Officer appointed to collect the same, Payment be refused, Distress may be made by Warrant under the Hands and Seals of two Justices of the Peace, to be levied by Distress and Sale of Goods, or for want of such Distress and Non-payment, the Offender to be Imprisoned till payment be made, unless a Peer of the Realm.

The Money so collected is yearly to be accounted for by the Scavengers, for the time being, to two or more of the Justices of the Peace residing in or near the places for which Scavengers are appointed, within 28 days after the new Scavengers are chosen for the Year ensuing, and to be paid into the Hands of the new Scavengers, if any remain undisbursed in their Hands; and two such Justices of the Peace, upon refusal to make Account, may commit the Refuser or Refusers to Prison without Bail or Mainprize, till he or they account and pay the Remainder.

Where in a *Parish* there are such High-ways as cannot be amended without the help of Assessment, then one or more Assessments from time to time may be made upon all the Inhabitants, Occupiers, and Owners of Lands, Houses, Tenements, or any personal Estate there,

there, usually ratable to the poor, to be allowed, levied, and collected by such persons as the said Justices of the Peace, at their General Quarter-Sessions, shall appoint and direct, and the Money so raised to be accounted for, and employed towards repairing such High-ways from time to time, as the Justices shall appoint or order to be levied, by the Distress and Sale of the Goods of the Persons so assessed, upon Non-payment of the same within 14 Days after Demand.

All the Sinks, Sewers and Vaults made since the 12th of King *Charles* the Second, in the City and Liberties of *Westminster*, &c. are under the care of the Commissioners of Sewers, who have power to cleanse, alter, or so order them as to them shall seem best for conveniency, or to make new ones, and to take all Nusances, and to take away any cross Gutters or Channels in all or any of their Streets or Lanes within their Division.

Every Truss of old Hay brought or offered to be sold within the Cities of *London* and *Westminster*, and other places within the Weekly Bills of Mortality, is according to Statute to weigh 56 Pound at the least, from the last Day of *August* to the first Day of *June*, and from the first Day of *June*, to the last Day of *August*, being new Hay of the Years growth to weigh 60 Pound; but if old Hay of the last Years growth, 36, as aforesaid, and none to suffer their Waggons or Carts to stand in the places aforesaid, loaden with Hay or Straw, to sell the same after two of the Clock in the Afternoon, from *Michaelmas* to *Lady-day*, nor after 3 from *Lady-day* to *Michaelmas*, on penalty of 5 Shillings for every Offence or Neglect, one half to the Poor, and the other to the Informer, upon Commission of the Offence; but if the Justice of Peace see it on view, then upon Conviction one half to the Poor, and the other half to the Scavenger, upon default of Payment for the paving and cleansing the place, or otherways to the relief of the Poor as aforesaid. This to be levied by Warrant, by Distress and Sale of the Offenders Goods and Chattels, by the Constable, Headborough,

rough, &c. of the Parish where the Offence is committed, and in default of Distress or Non-payment within 6 Days upon Notice or Writing left at the Offenders House by the Constable, or Headborough, where it is not by the Act of 2 W. & M. otherways provided, unless the Party be a Peer of the Realm, he is to be committed to the common Gaol of the City or County respectively by Warrant; and to remain without Bail or Mainprize till Payment. And by the same Statute the Wheels of every Cart or Dray to be used for any Carriage whatsoever, from any place within the said Cities, and places within the same, where the Streets are paved, are to be made to contain in full breadth 6 Inches in the Felly, and must not be shod or wrought about with Iron Work, nor drawn with above two Horses after they are up Hill from the Water-side, upon forfeiture of 40s. for every Offence, to be levied by Warrant on Goods and Chattels, in Distress as other the like cases, though this extends not to Country Carts or Waggons, that shall bring Goods to the Cities or Places aforesaid, or shall carry any Goods half a Mile beyond the paved places of the Cities, Streets, &c., However, by an Act of 3 and 4 W. & M. ch. 12. this last Clause seems to be altered; for any Inhabitant of any of the Parishes within the weekly Bills of Mortality, who dwell off and from the Pavement, and use his Cart as well off as upon the Pavement, or any Brewer or Scavenger or other Person employed in carrying away the Dirt and Soil in Lanes, Streets and Alleys may use shod Wheels for Dray or Cart, and narrower than 6 Inches in the Fellies, notwithstanding the former Act or any Law or Usage to the contrary. But this seems not to affect Cars, and such as carry Merchants or Shop-keepers Goods.

By the Act 2 W. & M. no Person or Persons are to keep, breed, or feed Swine in any part of the House, Backsides of the paved Streets of the said Cities, Boroughs, or Parishes, where such Streets are contiguous, on penalty of forfeiting them to the use of the Poor of the Parish where such Swine shall be kept. All

All Houſholders in the Cities and Liberties of *Weſtminſter*, and Counties of *Surrey*, and *Middleſex*, comprized within the Bills of Mortality, are by a new Act, where their Houſes adjoyn to, and are next the Street, to hang on the out-ſide of their Houſes next the Street, every Night, from *Michaelmas* to *Lady-day*, Candle, or Lights in Lanthorns, from time to time as it ſhall grow Dark, to continue Burning till 12 of the Clock in the Night, on pain of forfeiting 2s. for every Default, unleſs ſuch as ſhall agree to pay and make uſe of the convex Lights or Lamps, to be placed at ſuch Diſtance in convenient places of the Streets, as two or more Juſtices of the Peace ſhall approve of.

Fairs, Toll-keepers, &c.

A Fair muſt be kept no longer than the Grant or Uſe by cuſtom will Warrant for what is Warrantable; and Goods ſo Sold after the Expiration of the Time, as Merchandize, &c. the Seller ſhall forfeit to the King double the Value of what is Sold, and the Proſecutor ſhall have the fourth part; the Fair muſt be duly Proclaimed by the Sheriff, or Lord of the Fair, and the Time it is to continue mentioned, the Place or Ground appointed, ſet out, and care taken that there be no Riots or Diſturbance, but an orderly keeping of it during the Time it laſts.

Where there is a Beaſt-Fair for Horſes, Mares, Geldings, and other Cattel, they muſt have their appointed places, that thoſe that reſort thither may have a certainty where to find them. And one ſufficient Perſon or more, muſt be appointed to take Toll, and keep the ſame place from 10 in the Forenoon, every Day, till Sun-ſet, during the Time of the Fair or Market, upon pain to forfeit for every Default 40s. And in Tolling, the Party thereto appointed muſt have before him the Parties Bargaining, upon his Tolling any Horſe, Mare, &c. and muſt Write in his Book the Chriſtian and Sir-names of all the Parties; alſo their Dwelling-

places, with the Colours, and some particular marks of the Horse or Mare, &c. so Sold or Bargained for, on penalty to forfeit for every Default 40s. and he is to have one credible Person known to him to Vouch the Horse or Mare, &c. and testifie his Knowledge of the Seller, and his Name and place of Abode, must be entred with the others in the Book, with the Colour, Mark, or Price of the Horse or Mare, Sold or Exchanged, and the Buyer requiring it, may have a Note in Writing out of the Book, Reciting the Contract and Toll-man's Hand thereto, for which he may take two-pence.

If any Toll-keeper suffer a Sale to pass without a Voucher, unless he well know the Party, and every Party making a false Testimony, or Avouchment, or every Seller unknown, not bringing a Voucher, and causing the same to be entred, forfeits 5l. one Moiety to the King, and the other to the Prosecutor, and the Sale of the said Horse, &c. to be void. Yet notwithstanding such Vouching, the Owner of a Stolen Horse, &c. so Sold, his Executors and Administrators, claiming him within 6 Months after the Stealing, may Redeem at the price he was Sold for, making proof that it is his, and that it was Stollen by two sufficient Witnesses before a Justice of the County where he is found, or the Head Officer or Magistrate of a Corporation, and the price to be such as the Buyer upon Oath shall testifie before the Justice he paid for him; and if the Stollen Horse be not Sold in open Fair or Market, and lawfully Toll'd, the Right is the Owner from whom he was Stole, and he may Seise or Replevy him in any place where he finds him.

If any Person buy Oxen, Goats, Sheep, Calves, Heifers, &c. alive, he shall not Sell them again alive, till he has kept them in his Pasture by the space of five Weeks.

Whoso shall sell or buy Corn without Measuring, being thereunto required, so selling or buying it in Sacks, or Bags, or in any other thing, shall forfeit the

said

said Corn, or the value thereof, to the Party making his complaint of this Offence against the Statute, 22 & 23 *Car.* 2. ch. 12. And upon complaint, the Defendant, by the Oath of one or more Witnesses before a Justice of the Peace, must prove that he or they did buy or sell according to the Statute of 22 *Car.* 2. and 23 *Car.* 2. or else pay the Forfeitures by the latter directed, which upon Warrant may be Levied by Distress and Sale of Goods; the Warrant to be given under the Hand and Seal of one or more Justices, before whom such Conviction shall be, one half to the poor of the Parish where the Offence is committed, and the other to the Informer, *Ibid.*

A Brass Bushel is to be chained to a Post, or publick place in the Market-place, at the charge of the Person taking Toll, for the publick use of the Measuring, upon penalty of forfeiting 5*l.* 22 *Car.* 2. ch. 8.

As for Measure, there shall be only the *Winchester* Bushel, and no other Bushel, and that to contain 8 Gallons: and whoso sells by any other, according to 22 *Car.* 2. ch. 8. forfeits 40*s.* And upon the Clerk of the Markets refusing to Seal such Measure as shall be full Gauged, he forfeits for the first Offence 5*l.* for the second 10*l.* Or if the King's Clerk of his Market of his House exact, or take more Fees than his due, that is, above one penny for Sealing a Bushel, a half-penny for half a Bushel, and one Farthing for Measures of less proportion, he incurs, and shall undergo the penalty in the Statute, *Car.* 1.

The SURVEYORS *Duty.*

Mending High-Ways.

Though Ways are generally called the King's Highway, yet of Ways there are three sorts. 1. A Way where Men have a just right to Walk in, pass and repass. 2. A common Foot-way and Horse-way. 3. A Way

Way for Carts and Wains, and all sorts of Carriages; and this latter is most properly called the King's Highway, free for himself and Subjects to pass and repass at all times; whereas some in the other Sense, are Ways only to Grounds, Houses, &c. And Ways by custom, and some upon Sufferances in the publick Way. All Nuisances or Stoppages are Indictable, especially if not timely removed on Notice given, or the Lord of the Soil for any digging or spoiling the High-ways, may bring his Action against the Offenders.

The Surveyors duly chose by the other Officers, with the Advice of the Inhabitants, or the Major part of them upon publick Notice before given, are diligently to exercise their Work on the days appointed, for the digging and carrying Gravel and other Materials, for mending such Ways where they shall find them defective, giving them Directions in order thereto; and upon publick Notice or Warning, the Persons so qualified are to send their Carts and Labourers.

Every Person having in his own Occupation a Plough-Land, in Tillage or Pasture, or keeping a Plough or Draught in the same Parish, is liable to send, according to the Fashion and Custom of the County wherein he resideth, or is so legally charged, a Wain or Cart with Oxen or Horses, fit for Carriage and Work of this Nature, attended by two able Men, who shall do such Work as shall be by the Surveyor, appointed them, for the space of Days, working 8 hours every such Day, under the penalty of forfeiting for every days Default 10s. and every other Householder, Cotter, or Labourer, not being a hired Servant, shall in Person attend the Service to Work, or send an able Man in his stead, under penalty for every Days default to pay 12d. and all other Persons, being no otherways chargeable, but Cottages being Subsidy 5l. in Goods, or 10s. by the Year in Lands, or above, they must find two able Men to Work in the Service.

It is in the Discretion of the Surveyors, if there be many Carts, Wains, &c. than are necessary, to appoint

two

two able Men instead of a Team, on forfeiture of 12d. each, in case of Defect. And if in 6 Days the Ways cannot be conveniently mended, as is the usual time, they may set a farther time; but then they must make Payment for it according to the Rate of the County; and if hereupon there be no Agreement, the Justice may settle the Rate.

If Materials be wanting, the Surveyors may take the small loose Stones from any Man's Quarry, and such Rubbish as he finds there, it being near the Road, without paying for it, but must not dig nor take away the great Stones. They may dig Gravel and Sand for the like Use, near any High-way, in other Men's Ground, not being their House, Yard, Orchard or Garden, without paying for it, the Pit not exceeding 10 Foot in breadth, and the like in width; which, as soon as the Work is over, must be covered up and made good at their charge who caused it to be digg'd; or if it be not fo filled up within one Month, they forfeit 5 Marks, to be recovered by the Owner, by Action of Debt.

All Owners of Ground adjoyning to the High-ways are to keep their Hedge low and upright, that the Boughs or Brambles standing one may not hinder or offend Travellers, and that so the Sun may shine on the Ways to dry them; and such as are negligent in this may be Presented and Indicted, and thereupon forfeit 10s. besides their Charges.

And in case Ditches are stopped up with Mud or Ouse that should be Drains to the High-way, so that the Water lies in it, and cannot have a current Passage, the Owner of such a Ditch or Water-drain shall forfeit 12d. for every Rod so neglected to be Scowred, by 18 *Eliz.* ch. 10. And the Surveyor hath power to make Conveniencies for draining the High-ways, as Sluces, Out-lets of Water, &c. into any Man's Ditch or Ground, for the better and more speedy Conveniency of passing the Road. If any Man, upon cleansing a Ditch, cast the Soil into the Road, and suffer it to lie there above the space of six Months, he is liable to

pay

pay 12 d. per Load for as many as shall be adjudged to be there.

If a Justice of the Peace shall, upon his own Knowledge of any Nusance on the Road, make a Presentment, it stands good, and two Justices, one being of the *Quorum*, may make the Amercement or Fine to be levied on the Offender.

These Officers, *viz.* Surveyors, have in their Care all Bridges within their several Parishes or Liberties, to see they are kept in good Repair, from time to time, at the Charge of the Parish, Hundred, or as the Custom has been, and is continued; and if a Custom has therein ceased for a time, it may be revived; for in some cases particular persons are bound, by Tenure of Land, &c. to repair part or the whole of a Bridge, &c. without a Parish Charge. But to instance these particulars, would be too tedious for my intended Brevity; and many times a whole County lies chargeable to be Rated for the Repair of a Bridge, &c.

Diverting High-ways.

A Surveyor may cause a Water-course or Spring in the High-way, within his Parish, to be turned into another Man's Grounds, or his Ditch next adjoyning to the said way, for the convenience of keeping the Road dry, as in his Discretion shall seem fitting. *Dalt.* c. 50. Fol. 130.

The Surveyors, or any one of them, have power to present to the next Justice of the Peace every Default, upon the 2 and 3 of *Philip* and *Mary*, c. 8, and 5 *Eliz.* c. 14. within one Month after the Default made, on the penalty of 40 *s.* and the Justice under penalty of 5 *l.* must certifie the same at the next Quarter-Sessions, where the Bench of Justices have power to enquire of the Default, and to set such Fine on the Offenders, as any two of them, one being of the *Quorum*, shall think fit, 5 *Eliz.* c. 1.

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If any Justice of the Peace present in Sessions upon his own Knowledge, it shall be a good Conviction, whereupon any two of the Justices, the one being of the *Quorum*, may assess a Fine, as well as if the Matter had been found on the Verdict of Twelve Men: But in this case the Offender shall be, as in other cases, admitted to his Traverse, 5 *Eliz.* c. 13. *Rast.* 199. and all such Fines and Forfeitures are to be bestowed and employed towards the mending and bettering of the High-ways in the Parish where the Offences are committed, *Wing. Abridg. Stat. Tit. High-ways,* 2 *and* 3 *P. and M.* c. 8.

Where Surveyors have laid out their Money for Materials to mend the Ways, where without there were none fitting to be had, it is enacted 1 and 2 of *William* and *Mary*, That upon notice given by the Surveyors of High-ways, to the Justices of the Peace, at their Grand Sessions, and Oath made of what Sum or Sums of Money are expended to that Use or Behoof, the Justices thereupon, or any two of them, under their Hands and Seals, may cause an equal Rate to be made, for the reimbursing the Surveyor or Surveyors, the Moneys by them to the Use aforesaid laid out, upon all the Inhabitants of such Parish or Township where it was expended, in Rates according to the Rules and Method prescribed in 43 *Eliz.* c. 2. for the Relief of the Poor; which Act directs the Tax to be laid on each individual Inhabitant, as Parson, Vicar and others; and every Occupier of House or Land, Tythes Impropriate, Impropriations of Tythes, Colomnies or Saleable under Woods in the said Parish, so to be Rated; and the Rate so allowed and settled by the Justices in their said Sessions, shall be gathered and collected by the Surveyor or Surveyors of the High-ways; and if any one refuses to pay the Money according to the Rate assessed, it is lawful for the Surveyors to levy it by Distress and Sale of Goods and Chattels of the Person so refusing, reserving reasonable Charges for making the said Distress, and rendring

rendring the Overplus to the Owner, if any there be.

By the 3 and 4 of *William* and *Mary* is farther provided, That whereas the Fines imposed and set on the Presentment of a Justice of the Peace, and other Fines and Issues, for not repairing the High-ways, being oftentimes returned into the Court of Exchequer, and other Courts, and so levied upon some particular Inhabitants, and no Provision made to reimburse them; now on the contrary, Fine, Issue, Penalty or Forfeiture, shall not, for the future, be returned into any of the said Courts, but be levied and put into the hands of the Surveyors, to be applied towards the Repair of the said High-ways; and if it be hereafter levied on one or more of the Inhabitants, his or their Complaint for Redress, lies to the Justices of the Peace, at their Special Sessions; and they, or any two of them, by Warrant under their Hands and Seals, may cause a Rate to be made according as before set down, for the reimbursing the Surveyors of their Money laid out for the Repair of the High-ways, or of such Inhabitant or Inhabitants, as the Money shall be levied upon; which Rate so made and confirmed, shall be collected by the Surveyor or Surveyors; and he or they, within a Month next after the making and confirming the Rate, must pay unto the Inhabitant or Inhabitants such Money so levied as aforesaid.

Rescues upon Seizure.

If any person or persons shall resist or make forcible Opposition against any of the persons employed in the due Execution of the Acts of Parliament 2 and 3 *P.* and *M.* 5 and 18 *Eliz.* 20 *Car.* 2. made for the more effectual Amendment of the High-ways, or shall Rescue any Goods or Cattle taken in Distress by vertue thereof, being convicted by the Oath of one credible Witness before any one Justice of the Peace, or by the view of the Justice himself; for every such Offence the

the Offender shall forfeit 40 s. and if not paid in seven days, the Party to be committed to the County Gaol, where the Offence was committed, to remain till paid; and this is to be delivered to the Surveyor or Surveyors of the High-ways in the Parish where the Offence was committed, and imployed for the amending the said Ways, 22 *Car.* 2. C. 12.

All Travelling Wains, Carts or Carriages, by way of common Carriage, are not to go with a Team on the publick High-ways with above Five Beasts at length, and if they shall Drive with a greater number of Horses or Oxen, they shall all draw in Pairs, that is, two a-breast, for such number as they shall use, except one Horse: And in defect of this, the Offender or Owner of the Waggon, Carriage, &c. forfeits 40 s. one third part to the Surveyors of the High-way of the Town, Village or Hamlet where the Offence shall be committed, another third to the Overseers of the Poor, and another to the Informer; and this to be imposed on the Offender by any one Justice of the Peace of the place or Division where the Offence is committed, upon the Oath of one credible Witness, or upon the Justices own view, and to be levied by the High Constable or other Officer of such place or Division, by Warrant. And a Surveyor, seeing and suffering Waggons or Carts to pass with more Horses, &c. than mentioned, or in any other Order, may, upon Conviction for such his neglect, be Amerced by the Justice in any Sum under 40 s. to be levied on his Goods and Chattels.

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